

ESTTA Tracking number: **ESTTA664382**

Filing date: **04/01/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212680
Party	Defendant Real Foods Pty Ltd
Correspondence Address	BRUCE S LONDA NORRIS MCLAUGHLIN & MARCUS PA 875 3RD AVENUE, 8TH FLOOR NEW YORK, NY 10022-6225 UNITED STATES jhamburg@nmmlaw.com, bcmarin@nmmlaw.com, abhatt@nmmlaw.com
Submission	Reply in Support of Motion
Filer's Name	Ami Bhatt
Filer's e-mail	jhamburg@nmmlaw.com, abhatt@nmmlaw.com, bcmarin@nmmlaw.com
Signature	/ami bhatt/
Date	04/01/2015
Attachments	RF Public Evidentiary Appx Part 1.pdf(3908488 bytes) RF Public Evidentiary Appx Part 2.pdf(2870548 bytes) RF Public Evidentiary Appx Part 3.pdf(3524745 bytes) RF Public Evidentiary Appx Part 4.pdf(5141209 bytes)

**EVIDENTIARY APPENDIX
OF APPLICANT REAL FOODS IN
SUPPORT OF ITS REPLY ON ITS
MOTION FOR SUMMARY JUDGMENT**

- 1. Declaration of Ami Bhatt (RF App. 2)**
- 2. Reply Declaration of Sarah Butler (RF App. 138)**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FRITO-LAY NORTH AMERICA, INC.

Opposer,

vs.

REAL FOODS PTY LTD.

Applicant.

Opposition No. 91212680 (Parent)
Opposition No. 91213587

**DECLARATION OF AMI BHATT IN FURTHER SUPPORT OF APPLICANT'S MOTION
FOR SUMMARY JUDGMENT/OPPOSITION TO CROSS-MOTION ON INHERENT
DISTINCTIVENESS**

I, Ami Bhatt, declare as follows:

1. I am employed as an associate attorney by Norris, McLaughlin & Marcus, P.A., counsel for Real Foods Pty Ltd. ("Real Foods") in this proceeding. I submit this Declaration in further support of Real Foods' Motion for Summary Judgment.

2. On October 1, 2014, I sent a letter to counsel for Opposer Frito-Lay North America, Inc. ("Frito-Lay") enclosing a CD-ROM containing its first production of documents responsive to Frito-Lay's First Set of Requests for Production. The documents contained in the disk were bates-numbered RF000001 through RF003530. The letter also drew attention to a notice contained on the CD-ROM, entitled "Important Notice Re Confidentiality Designations" (the "Notice") which it also enclosed. The Notice stated that "for ease of reference Applicant has produced certain Excel documents in their native format. In cases where documents in native format are provided, the designation for any documents as to which disclosure is restricted under the Protective Order is set forth in the correspondingly numbered 'Native Document Placeholder' located within the PDF folder." I attach as **Exhibit 1** the October 1, 2014 letter and enclosed Notice.

3. I attach as **Exhibit 2** a screen shot of the directory page of a CD-ROM of Real Foods' first production of documents, which disk is identical to that which was sent to Frito-Lay. The screen shot shows two folders: "Native" and "PDF." This screen shot also shows that the CD-ROM contains

the Notice in PDF format. The “Native” folder on the CD-ROM contains, among numerous other documents, files numbered RF000526.xls, RF000527.xls and RF000528.xls, which comprise the SPINS reports of Real Foods’ market share in certain markets. (The “xls” in the file name refers to the Excel format.)

4. I attach as **Exhibit 3** screen shots depicting files numbered RF000526.xls, RF000527.xls and RF000528.xls within the “Native” folder and these files when opened by the viewer in Microsoft’s Excel program. When printed, those SPINS reports contained in RF000526.xls, RF000527.xls and RF000528.xls are identical to those appended to the Declaration of Michael Movitz.¹

5. I attach as **Exhibit 4** screen shots of the correspondingly numbered PDF files which state “Native Document Placeholder. Please review the native document,” and identify the native document by bates number (RF000526.xls, RF000527.xls or RF000528.xls) and denote that the documents were designated as “Trade Secret/Commercially Sensitive.” Thus, Frito-Lay was directed *twice* to *each* of the bates numbers corresponding *each* of the three SPINS reports (that is, a total of *six* times), in documents contained both within the “PDF” folder and the “Native” folder. Additionally Frito-Lay received the Notice, instructing it on how to access the documents that were produced in their native format, *twice*—with the October 1st letter, which enclosed the Notice, and as a clearly labeled PDF file on the CD-ROM itself.

6. Frito-Lay had no trouble following the instructions in the Notice to access other documents produced in their native format on the CD-ROM. Thus, for example, Frito-Lay makes reference to another Excel document produced by Real Foods on the identical CD-ROM and in an identical fashion, in its Requests for Admission. *See* Frito-Lay’s Evidentiary Appendix (“FL App.”) at p. 2767, which makes reference to the document numbered RF000641. I attach as **Exhibit 5:** (i) a screen shot depicting the file numbered RF000641 within the “PDF” folder and this file when opened by the viewer in

¹ The screen shots contained in Exhibit 3 display content contained in the SPINS reports adjacent to the file numbers RF000526.xls, RF000527.xls and RF000528.xls. As the SPINS reports have been designated as trade secret/commercially sensitive by Real Foods, these screen shots may only be viewed in Real Foods’ Confidential Evidentiary Appendix in Support of its Reply on its Motion for Summary Judgment.

the Adobe Reader program; and (ii) a screen shot depicting the file numbered RF000641.xls within the “Native” folder. Just as Frito-Lay accessed and viewed these Excel spreadsheets, it would also have been able to access and view the SPINS reports.

7. In seeking to authenticate the SPINS reports for purposes of Real Foods’ summary judgment motion, I contacted SPINS and was advised that Michael Movitz was in a position to authenticate the reports. At the time I contacted SPINS, and SPINS in turn identified Michael Movitz, discovery in this proceeding had closed. Should this matter proceed to trial, it is Real Foods’ intention, when its Pretrial Disclosures become due, to identify Mr. Movitz therein as a witness to authenticate the SPINS reports. Real Foods never had any intention, and does not presently have an intention, to call Mr. Movitz as an expert in this proceeding, as again, his declaration merely sought to authenticate documents previously produced to Frito-Lay during the course of discovery.

8. I attach as **Exhibit 6** a printout of the web page <http://www.pureharvest.com.au/content/where-buy> which shows that the popped corn cakes produced by Pure Harvest, an Australian company, are sold at retailers located exclusively outside the United States.

9. I attach as **Exhibit 7** a printout of the web page <http://rudehealth.com/where-to-buy/> which shows that the popped corn cakes produced by Rude Health, a UK company, are sold exclusively outside the United States.

10. I attach as **Exhibit 8** a printout of the web page <http://whois.icann.org/en/lookup?name=best-crackers.com> showing the name of the Registrant of the web site best-crackers.com, including his address in Sichuan Province, China.

11. I attach as **Exhibit 9** printouts of the U.S. Certificates of Trademark Registration obtained from the USPTO web site, using TSDR, for the following twenty seven (27) marks; all but two (as noted) are valid and subsisting, none of the registrations were based on Section 2(f), and none disclaim the term THINS:

- i. BAKED POTATO THINS, Reg. No. 2883979;
- ii. BARKTHINS SNACKING CHOCOLATE, Reg. No. 4502984;

- iii. BARKTHINS, Reg. No. 4523246;
- iv. CINNAMON THIN, Reg. No. 4250188;
- v. COFFEE THINS, Reg. No. 4339742;
- vi. COUNTRY THINS, Reg. No. 4094572;
- vii. FALAFEL THINS, Reg. No. 4050610;
- viii. GARDEN CHICKEN THINS, Reg. No. 1590093;
- ix. GOURMET THINS, Reg. No. 1339385;
- x. GRILLIN' THINS, Reg. No. 4013885;
- xi. NUT-THINS, Reg. No. 2143587;
- xii. PB THINS PEANUT BUTTER CRACKERS, Reg. No. 4144043;
- xiii. PB THINS, Reg. No. 4144045;
- xiv. PINEAPPLE THINS, Reg. No. 1925625 (cancelled for failure to file Section 8);
- xv. PITA THINS, Reg. No. 1982930;
- xvi. POCKET THINS, Reg. No. 4126741;
- xvii. PROTI-THIN, Reg. No. 4551422;
- xviii. QTHINS, Reg. No. 4151777;
- xix. QTHINS (stylized), Reg. No. 4151778;
- xx. SANDWICH THINS, Reg. No. 3637950;
- xxi. SOY THINS, Reg. No. 3044541 (cancelled for failure to file Section 8)
- xxii. STONED WHEAT THINS, Reg. No. 1718484;
- xxiii. SWEET THINS, Reg. No. 1926608;
- xxiv. THINNY THIN THINS, Reg. No. 3729315;
- xxv. VEGETABLE THINS, Reg. No. 1244724;
- xxvi. WATERTHINS, Reg. No. 3212339;
- xxvii. WHEAT THINS, Reg. No. 1022799.

12. I attach as **Exhibit 10** bates-numbered excerpts from Real Foods' production of documents which Real Foods produced to Frito-Lay in response to requests for production of documents in this proceeding, with the relevant language highlighted.

13. I attach as **Exhibit 11** excerpts of brand owner and consumer comments about various snack food brands printed from the following web pages, with the relevant language highlighted:

- a. yelenasweets.com/2013/06/22/substitute-for-cool-whip/ ("It's great for decorating cakes, cupcakes, pies, anything that uses cool whip really.")
- b. <http://www.foodnetwork.com/recipes/alton-brown/whipped-cream-recipe.html> ("After reading the ingredients on the store-bought cool whip I decided to make our own.")
- c. <https://www.facebook.com/Hostess> (comments by three different consumers: "I wish y'all would bring back the cherry sweet roll instead of having 15 different kind of twinkies"; "Where are the SusieQs???"; "what ever happened to the SUZYQ?")
- d. <https://www.facebook.com/Hostess> ("why do the twinkies taste different now?")
- e. <https://www.facebook.com/Hostess> (Post by Hostess: "5,000 Twinkies in one shopping cart? Must be #CyberMonday")
- f. https://www.twitter.com/hostess_snacks (Tweet by Hostess: "Can you believe it?? @MattStonie just ate 120 Twinkies to win The World Twinkie Eating Championship");
- g. https://twitter.com/izz_what_it_izz/status/578319815862956032 ("why have one cheez doodle when you can have the whole bag?")
- h. <https://www.facebook.com/newtons> ("Why does your company have to put artificial coloring in the newton cookies?")
- i. <https://www.facebook.com/DoritosUSA> ("I just bought a bag of doritos that had no flavoring...cool ranch minus the cool ranch equals tortilla chips")
- j. <https://www.facebook.com/DoritosUSA> ("Bring back the original 3D doritos")
- k. www.facebook.com/piratesbooty ("I noticed your new bags of pirate's booty and smart puffs no longer list that they're peanut/tree nut free.")
- l. [instagram.com/p/u_dOEkpSK6/modal=true](https://www.instagram.com/p/u_dOEkpSK6/modal=true) ("I had 6 bags of pirates booty last night.")
- m. www.facebook.com/frostedminiwheats ("My family and friends and everyone I know would love for you to bring back the double sided frosted mini wheats!!!")

- n. www.amazon.com/Kelloggs-Frosted-Mini-Wheats-Bite-Size-58-8-Ounce/dp/B001M0A8XG (“If you like large boxes of frosted mini wheats in one box with three separate bags you love these mini-wheats”)
- o. <https://www.facebook.com/Aliveandradiant> (“Thanks for the kale crunch!”)
- p. <https://www.facebook.com/Aliveandradiant> (“Tarragon dijon kale crunch is amazing.”)
- q. http://www.amazon.com/Hostess-Raspberry-Filling-Zingers-Individually/product-reviews/B009MBEZOZ/ref=cm_cr_dp_all_btm?ie=UTF8&showViewpoints=1&sortBy=bySubmissionDateDescending (“please bring raspberry zingers back”)
- r. www.amazon.com/Hostess-Raspberry-Filling-Zingers-Individually/product-reviews/B009MBEZOZ/ref=cm_cr_pr_btm_link_next_2?ie=UTF8&showViewpoint=s=1&sortBy=recent&reviewerType=all_reviews&filterByStar=all_stars&pageNumber=2 (“I have always loved these raspberry cream filling zingers”)
- s. www.viewpoints.com/Hostess-zingers-reviews (“The chocolate zingers are my favorite.”)
- t. www.huffingtonpost.com/lawrence-j-hanley/hostess-sale_b_6250650.html (“That’s the part of the story that everyone should know before they buy another Twinkie, Ho Ho or Zinger.”)
- u. www.instagram.com/p/qcmV6RGUlc/?modal=true (“Choose me! I always eat ritz.”)
- v. www.houseparty.com/event/triscuit/reviews/page4/product49 (“The cinnamon triscuits were the best...”)
- w. <http://bitebitewrite.com/review-nabisco-sea-salt-black-pepper-brown-rice-triscuits/> (“Sea Salt & Black Pepper Triscuit”)
- x. <http://www.foodchannel.com/articles/article/complain-about-triscuit-get-free-box/> (“I have eaten triscuits for many years now...”)

14. I attach as **Exhibit 12** true and correct copy of the Initial Disclosures served by Frito-Lay in this proceeding on March 31, 2014.

15. I attach as **Exhibit 13** true and correct copy of the Pretrial Disclosures served by Frito-Lay in this proceeding on January 9, 2015.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 31st day of March, 2015 in New York, New York.

Ami Bhatt

EXHIBIT 1

To the Declaration of Ami Bhatt

October 1, 2014

VIA FEDERAL EXPRESS

William G. Barber
Pirkey Barber PLLC
600 Congress Avenue, Suite 2120
Austin, TX 78701

Re: Frito-Lay North America, Inc. v. Real Foods Pty Ltd.
Trademark Trial and Appeal Board
Opposition No. 91212680
Opposition No. 91213587

Dear Bill:

On behalf of Applicant Real Foods Pty Ltd., we enclose a CD containing documents responsive to Opposer's First Set of Requests for Production of Documents and Things, bates-numbered RF000001 through RF003530. Product specimens bates-numbered Applicant's Specimen 01 through 08, and responsive to these discovery requests, also are enclosed.

In addition, we draw your attention to the enclosed notice, concerning the designation of confidential, highly confidential and trade secret/commercial sensitive materials in accordance with the TTAB's Standard Protective Order. A copy of this notice is also included in the CD containing Applicant's document production.

Further, please note that, due to the inclusion of the product specimens, Applicant's production is being sent via two Federal Express boxes.

Sincerely,
NORRIS MCLAUGHLIN & MARCUS, P.A.


Ami Bhatt

Enclosures

cc: Jeanne M. Hamburg, Esq.



NY: 875 Third Avenue, 8th Floor New York, NY 10022 • P: (212) 808-0700 • F: (212) 808-0844
NJ: 721 Route 202-206, Suite 200 P.O. Box 5933 Bridgewater, NJ 08807-5933 • P: (908) 722-0700 • F: (908) 722-0755
PA: The Paragon Centre, Suite 300 1611 Pond Road Allentown, PA 18104-2258 • P: (610) 391-1800 • F: (610) 391-1805
www.nmmlaw.com E: info@nmmlaw.com



875 Third Avenue
8th Floor
New York, NY 10022
T: 212-808-0700
F: 212-808-0844

To: William Barber, Paul Madrid
From: Ami Bhatt
Date: October 1, 2012
Re: Designation of Confidential Materials: Frito-Lay North America, Inc. v. Real Foods
Pty Ltd. Trademark Trial and Appeal Board, Consolidated Opposition No. 91212680

Please note that designations indicating the existence of confidential information, namely those documents marked Confidential, Highly Confidential, or Trade Secret/Commercially Sensitive in accordance with the terms of the Trademark Trial and Appeal Board's Standard Protective Order, are located on the bottom left corner of applicable PDF files.

Further, for ease of reference and review, Applicant has produced certain Excel documents in their native format. In cases where documents in native format are provided, the designation for any documents as to which disclosure is restricted under the Protective Order is set forth in the correspondingly numbered "Native Document Placeholder" located within the pdf folder. By way of example, RF001185 is an Excel spreadsheet designated Trade Secret/Commercially Sensitive as set forth in PDF Native Document Placeholder file titled RF001185.

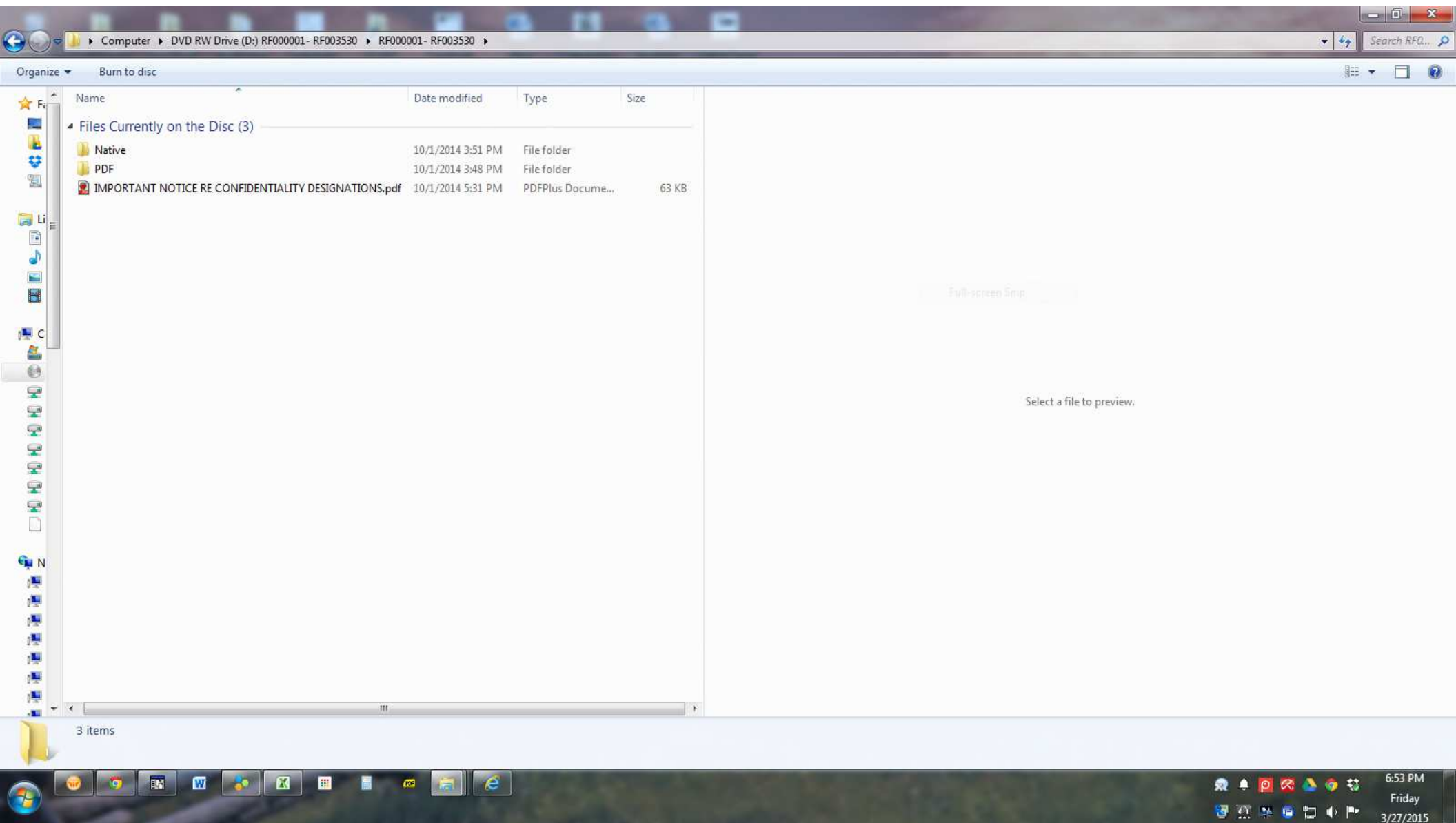
If you have any questions about this notice or the designation of confidential information, please do not hesitate to contact me.



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EXHIBIT 2

To the Declaration of Ami Bhatt



1/1

To: William Barber, Paul Madrid
From: Ami Bhatt
Date: October 1, 2012
Re: Designation of Confidential Materials: Frito-Lay North America, Inc. v. Real Foods
Pty Ltd. Trademark Trial and Appeal Board, Consolidated Opposition No. 91212680

Please note that designations indicating the existence of confidential information, namely those documents marked Confidential, Highly Confidential, or Trade Secret/Commercially Sensitive in accordance with the terms of the Trademark Trial and Appeal Board's Standard Protective Order, are located on the bottom left corner of applicable PDF files.

Further, for ease of reference and review, Applicant has produced certain Excel documents in their native format. In cases where documents in native format are provided, the designation for any documents as to which disclosure is restricted under the Protective Order is set forth in the correspondingly numbered "Native Document Placeholder" located within the pdf folder. By way of example, RF001185 is an Excel spreadsheet designated Trade Secret/Commercially Sensitive as set forth in PDF Native Document Placeholder file titled RF001185.

If you have any questions about this notice or the designation of confidential information, please do not hesitate to contact me.



EXHIBIT 3

To the Declaration of Ami Bhatt

Confidential

**Documents Designated
Trade Secret/Commercially Sensitive**

RF App. 0016-0021

**CONFIDENTIAL MATERIAL
DESIGNATED TRADE SECRET/COMMERCIALY
SENSITIVE**

EXHIBIT 4

To the Declaration of Ami Bhatt

Computer > DVD RW Drive (D:) RF000001- RF003530 > RF000001- RF003530 > PDF

Organize Burn to disc

Name	Date modified	Type
RF000519.pdf	10/1/2014 12:55 PM	PDFPlus Document
RF000520.pdf	10/1/2014 12:55 PM	PDFPlus Document
RF000523.pdf	10/1/2014 12:54 PM	PDFPlus Document
RF000524.pdf	10/1/2014 12:54 PM	PDFPlus Document
RF000525.pdf	10/1/2014 12:54 PM	PDFPlus Document
RF000526.pdf	10/1/2014 12:54 PM	PDFPlus Document
RF000527.pdf	10/1/2014 12:54 PM	PDFPlus Document
RF000528.pdf	10/1/2014 12:55 PM	PDFPlus Document
RF000529.pdf	10/1/2014 12:54 PM	PDFPlus Document
RF000531.pdf	10/1/2014 12:55 PM	PDFPlus Document
RF000532.pdf	10/1/2014 12:54 PM	PDFPlus Document
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RF000539.pdf	10/1/2014 12:55 PM	PDFPlus Document
RF000541.pdf	10/1/2014 12:54 PM	PDFPlus Document
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RF000561.pdf	10/1/2014 12:54 PM	PDFPlus Document
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RF000563.pdf	10/1/2014 12:54 PM	PDFPlus Document
RF000564.pdf	10/1/2014 12:54 PM	PDFPlus Document
RF000565.pdf	10/1/2014 12:54 PM	PDFPlus Document

NATIVE DOCUMENT PLACEHOLDER

Please review the native document RF000526.xls

Trade Secret/Commercially Sensitive

RF000526

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RF000526.pdf Date modified: 10/1/2014 12:54 PM Date created: 10/1/2014 12:54 PM
PDFPlus Document Size: 2.67 KB

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Friday
3/27/2015

Computer > DVD RW Drive (D:) RF000001- RF003530 > RF000001- RF003530 > PDF

Organize Burn to disc

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RF000520.pdf	10/1/2014 12:55 PM	PDFPlu
RF000523.pdf	10/1/2014 12:54 PM	PDFPlu
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Please review the native document RF000527.xls

Trade Secret/Commercially Sensitive

RF000527

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RF000527.pdf Date modified: 10/1/2014 12:54 PM Date created: 10/1/2014 12:54 PM
PDFPlus Document Size: 2.67 KB

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Friday
3/27/2015

Computer > DVD RW Drive (D:) RF000001 - RF003530 > RF000001 - RF003530 > PDF

Organize Burn to disc

Name	Date modified	Type
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RF000523.pdf	10/1/2014 12:54 PM	PDFPlus Document
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NATIVE DOCUMENT PLACEHOLDER

Please review the native document RF000528.xls

Trade Secret/Commercially Sensitive

RF000528

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PDFPlus Document Size: 2.67 KB

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Please review the native document RF000526.xls

NATIVE DOCUMENT PLACEHOLDER

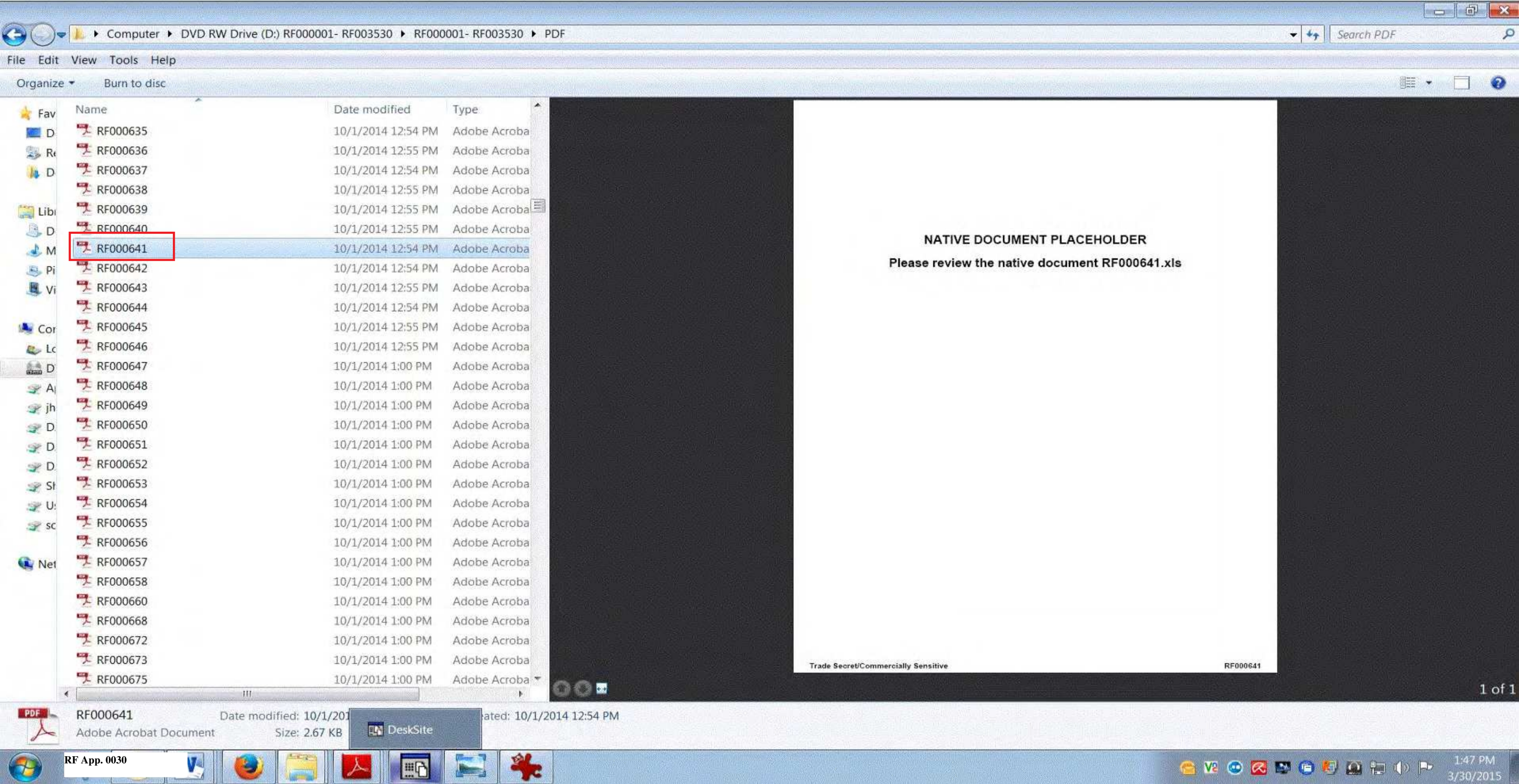
Please review the native document RF000527.xls

NATIVE DOCUMENT PLACEHOLDER

Please review the native document RF000528.xls

EXHIBIT 5

To the Declaration of Ami Bhatt



Name	Date modified	Type
RF000635	10/1/2014 12:54 PM	Adobe Acrobat
RF000636	10/1/2014 12:55 PM	Adobe Acrobat
RF000637	10/1/2014 12:54 PM	Adobe Acrobat
RF000638	10/1/2014 12:55 PM	Adobe Acrobat
RF000639	10/1/2014 12:55 PM	Adobe Acrobat
RF000640	10/1/2014 12:55 PM	Adobe Acrobat
RF000641	10/1/2014 12:54 PM	Adobe Acrobat
RF000642	10/1/2014 12:54 PM	Adobe Acrobat
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RF000660	10/1/2014 1:00 PM	Adobe Acrobat
RF000668	10/1/2014 1:00 PM	Adobe Acrobat
RF000672	10/1/2014 1:00 PM	Adobe Acrobat
RF000673	10/1/2014 1:00 PM	Adobe Acrobat
RF000675	10/1/2014 1:00 PM	Adobe Acrobat

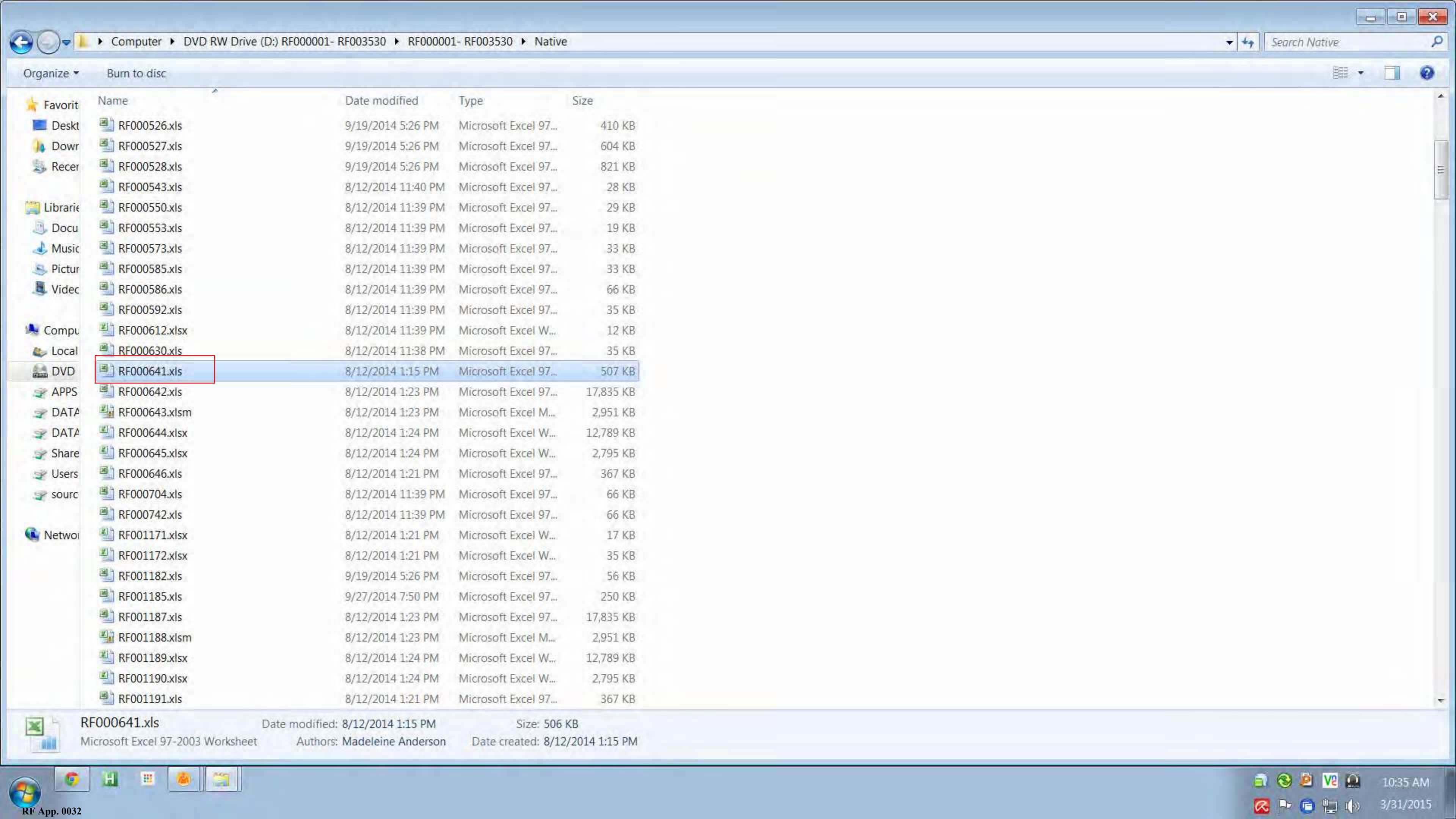
NATIVE DOCUMENT PLACEHOLDER
Please review the native document RF000641.xls

PDF RF000641 Date modified: 10/1/2014 12:54 PM Size: 2.67 KB

Adobe Acrobat Document

DeskSite

NATIVE DOCUMENT PLACEHOLDER
Please review the native document RF000641.xls



Computer > DVD RW Drive (D:) RF000001- RF003530 > RF000001- RF003530 > Native

Search Native

Organize Burn to disc

	Name	Date modified	Type	Size
Favorites				
Desktop	RF000526.xls	9/19/2014 5:26 PM	Microsoft Excel 97...	410 KB
Download	RF000527.xls	9/19/2014 5:26 PM	Microsoft Excel 97...	604 KB
Recent	RF000528.xls	9/19/2014 5:26 PM	Microsoft Excel 97...	821 KB
	RF000543.xls	8/12/2014 11:40 PM	Microsoft Excel 97...	28 KB
Libraries	RF000550.xls	8/12/2014 11:39 PM	Microsoft Excel 97...	29 KB
Documents	RF000553.xls	8/12/2014 11:39 PM	Microsoft Excel 97...	19 KB
Music	RF000573.xls	8/12/2014 11:39 PM	Microsoft Excel 97...	33 KB
Pictures	RF000585.xls	8/12/2014 11:39 PM	Microsoft Excel 97...	33 KB
Videos	RF000586.xls	8/12/2014 11:39 PM	Microsoft Excel 97...	66 KB
	RF000592.xls	8/12/2014 11:39 PM	Microsoft Excel 97...	35 KB
Computer	RF000612.xlsx	8/12/2014 11:39 PM	Microsoft Excel W...	12 KB
Local Disk (C:)	RF000630.xls	8/12/2014 11:38 PM	Microsoft Excel 97...	35 KB
DVD	RF000641.xls	8/12/2014 1:15 PM	Microsoft Excel 97...	507 KB
APPS	RF000642.xls	8/12/2014 1:23 PM	Microsoft Excel 97...	17,835 KB
DATA	RF000643.xlsm	8/12/2014 1:23 PM	Microsoft Excel M...	2,951 KB
DATA	RF000644.xlsx	8/12/2014 1:24 PM	Microsoft Excel W...	12,789 KB
Share	RF000645.xlsx	8/12/2014 1:24 PM	Microsoft Excel W...	2,795 KB
Users	RF000646.xls	8/12/2014 1:21 PM	Microsoft Excel 97...	367 KB
sources	RF000704.xls	8/12/2014 11:39 PM	Microsoft Excel 97...	66 KB
	RF000742.xls	8/12/2014 11:39 PM	Microsoft Excel 97...	66 KB
Network	RF001171.xlsx	8/12/2014 1:21 PM	Microsoft Excel W...	17 KB
	RF001172.xlsx	8/12/2014 1:21 PM	Microsoft Excel W...	35 KB
	RF001182.xls	9/19/2014 5:26 PM	Microsoft Excel 97...	56 KB
	RF001185.xls	9/27/2014 7:50 PM	Microsoft Excel 97...	250 KB
	RF001187.xls	8/12/2014 1:23 PM	Microsoft Excel 97...	17,835 KB
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RF000641.xls Date modified: 8/12/2014 1:15 PM Size: 506 KB
Microsoft Excel 97-2003 Worksheet Authors: Madeleine Anderson Date created: 8/12/2014 1:15 PM

EXHIBIT 6

To the Declaration of Ami Bhatt



Connect with us  (<https://instagram.com/pureharvest>)

 (<https://twitter.com/PureharvestAust>)

 (<https://www.facebook.com/PureharvestAust>)

Where To Buy. Purely the best.

National

Pureharvest products are available in all good health food stores and leading supermarkets throughout Australia. These include Coles, Woolworths, Aldi, IGA and other independent supermarkets.

Having trouble purchasing any Pureharvest products?

If you are having trouble purchasing any Pureharvest products please contact your local store manager and request that they carry your favourite Pureharvest products.

Alternatively you can contact the major supermarkets directly by clicking on the links below and request that they stock the Pureharvest products that you wish to buy.

Woolworths Supermarkets

Contact Woolworths

(<http://www.woolworths.com.au/wps/wcm/connect/website/woolworths/contact+us>)

Coles Supermarkets

[Contact Coles \(http://www.coles.com.au/customer-service/contact-us\)](http://www.coles.com.au/customer-service/contact-us)

IGA Supermarkets

[Contact IGA \(http://www.iga.net.au/igafresh/index.cfm?page_id=2285\)](http://www.iga.net.au/igafresh/index.cfm?page_id=2285)

Aldi Supermarkets

[Contact Aldi \(http://www.aldi.com.au/au/html/company/3389.htm?WT.z_src=main\)](http://www.aldi.com.au/au/html/company/3389.htm?WT.z_src=main)

About Life

[Contact About Life \(http://aboutlife.com.au/store/content/77/contact-us/\)](http://aboutlife.com.au/store/content/77/contact-us/)

Gluten Free Grocer

[Contact Gluten Free Grocer \(http://glutenfreegrocer.com.au/\)](http://glutenfreegrocer.com.au/)

International

Pureharvest has a wide range of international distribution partnerships. Please contact us and we will be happy to get you in contact with one of our distribution partners in your area.

For specific information regarding distributors in your region please [Contact Us \(http://www.pureharvest.com.au/content/contact-pureharvest\)](http://www.pureharvest.com.au/content/contact-pureharvest)

Pureharvest products are available in the following countries:

Australia

New Zealand - [Real Foods New Zealand](http://www.realfoods.co.nz/Products/Pureharvest.html)

[\(http://www.realfoods.co.nz/Products/Pureharvest.html\)](http://www.realfoods.co.nz/Products/Pureharvest.html)

Singapore

Mauritius

China

Hong Kong

Malaysia

Brunei

United Arab Emirates

Taiwan

Thailand

Japan

Bahrain

South Africa

[Our Products \(//www.pureharvest.com.au/product/pureharvest-products\)](http://www.pureharvest.com.au/product/pureharvest-products)



<http://www.pureharvest.com.au/product/pureharvest-products>

We have a great range of organic and natural products

Finding our Products

If you're having trouble purchasing your favourite Pureharvest product please

Fill out a request (<http://www.pureharvest.com.au/content/store-product-request>)

- ### Products

[Our Range \(/product/pureharvest-products\)](/product/pureharvest-products)

[Where to Buy \(/content/where-buy\)](/content/where-buy)

[FAQs \(/content/faq\)](/content/faq)

[Recipes \(http://recipes.pureharvest.com.au\)](http://recipes.pureharvest.com.au)

- ### Philosophy

[Why Organic? \(/content/why-organic\)](/content/why-organic)

[Say No to GM Food \(/content/say-no-gm\)](/content/say-no-gm)

[Quality Guarantee \(/content/our-quality-guarantee\)](/content/our-quality-guarantee)

- ### About

[Company History \(/content/our-company-history\)](/content/our-company-history)

[Mission Statement \(/content/our-mission-statement\)](/content/our-mission-statement)

[Environmental Policy \(/content/environmental-policy-statement\)](/content/environmental-policy-statement)

- ### Contact

[Contact Us \(/content/contact-pureharvest\)](/content/contact-pureharvest)

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EXHIBIT 7

To the Declaration of Ami Bhatt



Where to buy

As Nature Intended Budgens Planet Organic Ocado Sainsburys Tesco Waitrose Whole Foods Market
Holland & Barrett Abel & Cole

FIND YOUR LOCAL STOCKISTS	<input type="text" value="Your local town or postcode"/>	SEARCH
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EXHIBIT 8

To the Declaration of Ami Bhatt

简体中文 English Français Русский Español العربية

ICANN WHOIS BETA

best-crackers.com

Lookup

Showing results for: best-crackers.com

Original Query: best-crackers.com

Contact Information

Registrant Contact

Name: zhang wei

Organization: zhang wei

Mailing Address: chengdu li
gong daxue 149 xin xiang,
chengdu Sichuan 610051
CN

Phone: +86.2873097824

Ext:

Fax: +86.15882114235

Fax Ext:

Email: zhangjiawei00@gmail.com

Admin Contact

Name: zhang wei

Organization: zhang wei

Mailing Address: chengdu li
gong daxue 149 xin xiang,
chengdu Sichuan 610051
CN

Phone: +86.2873097824

Ext:

Fax: +86.15882114235

Fax Ext:

Email: zhangjiawei00@gmail.com

Tech Contact

Name: zhang wei

Organization: zhang wei

Mailing Address: chengdu li
gong daxue 149 xin xiang,
chengdu Sichuan 610051
CN

Phone: +86.2873097824

Ext:

Fax: +86.15882114235

Fax Ext:

Email: zhangjiawei00@gmail.com

Registrar

WHOIS Server: whois.35.com

URL: http://www.35.com

Registrar: 35 Technology Co., Ltd.

IANA ID: 1316

Status

Domain Status: clientTransferProhibited

Abuse Contact Email: abuse@35.cn
Abuse Contact Phone: +86.5925391800

Important Dates

Updated Date: 2014-10-15
Created Date: 2013-10-11
Registration Expiration Date:
2015-10-11

Name Servers

ns17.gegehost.net
ns18.gegehost.net

Raw WHOIS Record

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Domain Name: best-crackers.com
Registry Domain ID:
Registrar WHOIS Server: whois.35.com
Registrar URL: http://www.35.com
Updated Date: 2014-10-15 21:46:16
Creation Date: 2013-10-11
Registrar Registration Expiration Date: 2015-10-11
Registrar: 35 Technology Co., Ltd.
Registrar IANA ID: 1316
Registrar Abuse Contact Email: abuse@35.cn
Registrar Abuse Contact Phone: +86.5925391800
Reseller: yushan
li
Domain Status: clientTransferProhibited
Registry Registrant ID:
Registrant Name: zhang wei
Registrant Organization: zhang wei
Registrant Street: chengdu li gong daxue 149 xin xiang
Registrant City: chengdu
Registrant State/Province: Sichuan
Registrant Postal Code: 610051
Registrant Country: CN
Registrant Phone: +86.2873097824
Registrant Phone Ext:
Registrant Fax: +86.15882114235
Registrant Fax Ext:
Registrant Email: zhangjiawei00@gmail.com
Registry Admin ID:
Admin Name: zhang wei
Admin Organization: zhang wei
Admin Street: chengdu li gong daxue 149 xin xiang
```

```
Admin City:chengdu
Admin State/Province:Sichuan
Admin Postal Code:610051
Admin Country:CN
Admin Phone:+86.2873097824
Admin Phone Ext:
Admin Fax:+86.15882114235
Admin Fax Ext:
Admin Email:zhangjiawei00@gmail.com
Registry Tech ID:
Tech Name:zhang wei
Tech Organization:zhang wei
Tech Street:chengdu li gong daxue 149 xin xiang
Tech City:chengdu
Tech State/Province:Sichuan
Tech Postal Code:610051
Tech Country:CN
Tech Phone:+86.2873097824
Tech Phone Ext:
Tech Fax:+86.15882114235
Tech Fax Ext:
Tech Email:zhangjiawei00@gmail.com
Name Server: ns17.gegehost.net
Name Server: ns18.gegehost.net
DNSSEC: unsigned
URL of the ICANN WHOIS Data Problem Reporting
System:http://wdprs.internic.net/
>>> Last update of WHOIS database: 2014-10-15 21:46:16 <<<
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Submit a Complaint for WHOIS

[WHOIS Inaccuracy Complaint Form](#)

[WHOIS Service Complaint Form](#)

[WHOIS Compliance FAQs](#)

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EXHIBIT 9

To the Declaration of Ami Bhatt

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,883,979

Registered Sep. 14, 2004

**TRADEMARK
PRINCIPAL REGISTER**

BAKED POTATO THINS

WILLIAM POLL, INC. (NEW YORK CORPORATION)
1051 LEXINGTON AVENUE
NEW YORK, NY 10021

FOR: POTATO-BASED SNACK FOODS, NAMELY
POTATO CRISPS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 0-0-1999; IN COMMERCE 0-0-1999.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "BAKED POTATO", APART FROM
THE MARK AS SHOWN.

SER. NO. 76-552,117, FILED S.R. 10-17-2003 AM.
P.R. 3-31-2004.

MIDGE BUTLER, EXAMINING ATTORNEY

United States of America
United States Patent and Trademark Office

barkTHINS
— snacking chocolate —

Reg. No. 4,502,984

CODY KRAMER IMPORTS, LLC (NEW YORK LIMITED LIABILITY COMPANY)
225 NORTH ROUTE 303
CONGERS, NY 10920

Registered Mar. 25, 2014

Int. Cl.: 30

FOR: BAKERY GOODS; CHOCOLATE CANDIES; CONFECTIONERY MADE OF SUGAR;
COOKIES AND CRACKERS; SNACK CAKES; SNACK FOODS, NAMELY, CHOCOLATE-
BASED SNACK FOODS; SNACK MIX CONSISTING PRIMARILY OF CRACKERS, PRETZELS
AND/OR POPPED POPCORN, IN CLASS 30 (U.S. CL. 46).

TRADEMARK

PRINCIPAL REGISTER

FIRST USE 1-1-2013; IN COMMERCE 1-1-2013.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "SNACKING CHOCOLATE",
APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE WORDS "BARKTHINS" IN LARGER STYLIZED FONTS
ABOVE THE WORDS "SNACKING CHOCOLATE" IN SMALLER STYLIZED FONTS WITH
A LINE AT EACH SIDE.

SN 85-830,396, FILED 1-23-2013.

LINDA M. KING, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

United States of America
United States Patent and Trademark Office

BARKTHINS

Reg. No. 4,523,246

Registered Apr. 29, 2014

Int. Cl.: 30

TRADEMARK

PRINCIPAL REGISTER

CODY KRAMER IMPORTS, LLC (NEW YORK LIMITED LIABILITY COMPANY)
225 NORTH ROUTE 303
CONGERS, NY 10920

FOR: BAKERY GOODS; CHOCOLATE CANDIES; CONFECTIONERY MADE OF SUGAR;
COOKIES AND CRACKERS; SNACK CAKES; SNACK FOODS, NAMELY, CHOCOLATE-
BASED SNACK FOODS; SNACK MIX CONSISTING PRIMARILY OF CRACKERS, PRETZELS
AND/OR POPPED POPCORN, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-1-2013; IN COMMERCE 1-1-2013.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-
TICULAR FONT, STYLE, SIZE, OR COLOR.

SN 85-902,420, FILED 4-12-2013.

MIDGE BUTLER, EXAMINING ATTORNEY



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

United States of America

United States Patent and Trademark Office

CINNAMON THIN

Reg. No. 4,250,188

Registered Nov. 27, 2012

Int. Cl.: 30

TRADEMARK

PRINCIPAL REGISTER

DR. LUCY'S LLC (VIRGINIA LIMITED LIABILITY COMPANY)
930 DENISON AVE., SUITE 101A
NORFOLK, VA 23513

FOR: BAKERY GOODS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 11-1-2008; IN COMMERCE 11-1-2008.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CINNAMON", APART FROM THE MARK AS SHOWN.

SER. NO. 85-613,061, FILED 5-1-2012.

JOHN SCHUYLER YARD, EXAMINING ATTORNEY



David J. Kyros

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

COFFEE THINS

Reg. No. 4,339,742

Registered May 21, 2013

Int. Cl.: 30

TRADEMARK

PRINCIPAL REGISTER

TIERRA NUEVA FINE COCOA, LLC. (FLORIDA LIMITED LIABILITY COMPANY)
1130 NW 159TH DRIVE
MIAMI, FL 33169

FOR: COFFEE BASED CANDY, IN CLASS 30 (U.S. CL. 46).

FIRST USE 8-14-2012; IN COMMERCE 8-14-2012.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "COFFEE", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE WORDS "COFFEE THINS" IN CAPITAL LETTERS IN A STYLIZED FONT INSIDE OF A BANNER.

SN 85-555,360, FILED 2-28-2012.

LESLIE RICHARDS, EXAMINING ATTORNEY



Leslie Richards

Acting Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

COUNTRY THINS

Reg. No. 4,094,572

Registered Jan. 31, 2012

Int. Cl.: 30

TRADEMARK

PRINCIPAL REGISTER

OROGRAIN BAKERIES PRODUCTS, INC (DELAWARE CORPORATION)
255 BUSINESS CENTER DRIVE
HORSHAM, PA 19044

FOR: BAKERY PRODUCTS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 5-5-2011; IN COMMERCE 5-5-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 85-194,002, FILED 12-9-2010.

MIDGE BUTLER, EXAMINING ATTORNEY



David J. Kyfos

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

FALAFEL THINS

Reg. No. 4,050,610

Registered Nov. 1, 2011

Int. Cl.: 30

RAGONESE, REGINA (UNITED STATES INDIVIDUAL)
46 ROGERS ROAD
HAVERHILL, MA 01835

FOR: WHEAT, CORN, FAVA BEANS AND CHICK PEAS BASED SNACK CHIPS, IN CLASS
30 (U.S. CL. 46).

TRADEMARK

FIRST USE 10-20-2010; IN COMMERCE 10-20-2010.

PRINCIPAL REGISTER

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FALAFEL", APART FROM THE MARK AS SHOWN.

SN 85-157,506, FILED 10-20-2010.

SUSAN STIGLITZ, EXAMINING ATTORNEY



David J. Kyros

Director of the United States Patent and Trademark Office

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,590,093

Registered Apr. 3, 1990

**TRADEMARK
PRINCIPAL REGISTER**

GARDEN CHICKEN THINS

GARDEN COMPANY LIMITED, THE (HONG
KONG COMPANY)
58 CASTLE PEAK ROAD
KOWLOON, HONG KONG

FOR: BREAD, PASTRIES, BISCUITS, CAKES,
SNACK FOOD PRODUCTS, NAMELY, CRACK-
ERS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 0-0-1978; IN COMMERCE
0-0-1978.

OWNER OF U.S. REG. NO. 1,114,211.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "CHICKEN", APART FROM
THE MARK AS SHOWN.

SER. NO. 73-810,732, FILED 7-3-1989.

FRANCIS DUFFIN, EXAMINING ATTORNEY.

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office **Reg. No. 1,339,385**
Registered June 4, 1985

TRADEMARK
PRINCIPAL REGISTER

GOURMET THINS

NORA MATPRODUKTER A/S (NORWAY COR-
PORATION)
POSTBOKS 4642
TRONDHEIMSVEIEN 2
SOFTIENBERG, OSLO 5, NORWAY

FIRST USE 12-20-1983; IN COMMERCE
12-20-1983.

SER. NO. 473,826, FILED 4-5-1984.

FOR: CRISP BREAD, IN CLASS 30 (U.S. CL.
46).

IRA J. GOODSaid, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

GRILLIN' THINS

Reg. No. 4,013,885

Registered Aug. 16, 2011

Int. Cl.: 30

TRADEMARK

PRINCIPAL REGISTER

BIMBO BAKERIES USA, INC. (DELAWARE CORPORATION)
255 BUSINESS CENTER DRIVE
HORSHAM, PA 19044

FOR: BREAD, NAMELY, BUNS AND ROLLS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 2-28-2011; IN COMMERCE 2-28-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "GRILLING", APART FROM THE MARK AS SHOWN.

SN 85-135,708, FILED 9-22-2010.

DANIEL CAPSHAW, EXAMINING ATTORNEY



David J. Kyfos

Director of the United States Patent and Trademark Office

Int. Cl.: 30

Prior U.S. Cl.: 46

Reg. No. 2,143,587

United States Patent and Trademark Office

Registered Mar. 10, 1998

**TRADEMARK
PRINCIPAL REGISTER**

NUT-THINS

CALIFORNIA ALMOND GROWERS EX-
CHANGE (CALIFORNIA CORPORATION),
DBA BLUE DIAMOND GROWERS,
1802 C STREET
P.O. BOX 1768
SACRAMENTO, CA 95814

FIRST USE 7-17-1997; IN COMMERCE
7-17-1997.

SN 75-195,490, FILED 11-12-1996.

FOR: FLOUR-BASED WAFERS WITH AL-
MONDS OR OTHER NUTS AS AN INGREDI-
ENT, IN CLASS 30 (U.S. CL. 46).

NORA BUCHANAN WILL, EXAMINING AT-
TORNEY

United States of America

United States Patent and Trademark Office

PBThins

peanut butter crackers

Reg. No. 4,144,043

Registered May 15, 2012

Int. Cl.: 29

BELL PLANTATION, INC. (DELAWARE CORPORATION)
DEBORAH LAYFIELD
1017 CENTRAL AVENUE NORTH
TIFTON, GA 31794

FOR: NUT-BASED SNACK FOODS, IN CLASS 29 (U.S. CL. 46).

TRADEMARK

FIRST USE 5-15-2011; IN COMMERCE 5-15-2011.

PRINCIPAL REGISTER

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PB" AND "PEANUT BUTTER CRACKERS", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE WORDING "PB THINS" WHERE THE LETTERS "PB" ARE IN A BOLD UPPER CASE FONT AND THE WORDING "THINS" IS IN A THIN LOWER CASE HAND WRITTEN STYLE. UNDERNEATH IS THE WORDING "PEANUT BUTTER CRACKERS" IN A SMALLER PRINT FONT.

SN 85-278,476, FILED 3-28-2011.

COLLEEN KEARNEY, EXAMINING ATTORNEY



David J. Kyros

Director of the United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

PBthins

Reg. No. 4,144,045

Registered May 15, 2012

Int. Cl.: 29

TRADEMARK

PRINCIPAL REGISTER

BELL PLANTATION, INC. (DELAWARE CORPORATION)
DEBORAH LAYFIELD
1017 CENTRAL AVENUE NORTH
TIFTON, GA 31794

FOR: NUT-BASED SNACK FOODS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 5-15-2011; IN COMMERCE 5-15-2011.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "PB", APART FROM THE MARK AS SHOWN.

THE MARK CONSISTS OF THE WORDING "PB THINS" WHERE THE LETTERS "PB" ARE IN A BOLD UPPER CASE FONT AND THE TERM "THINS" IS IN A LOWER CASE HAND WRITTEN STYLE FONT.

SN 85-278,489, FILED 3-28-2011.

COLLEEN KEARNEY, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,925,625

Registered Oct. 10, 1995

**TRADEMARK
PRINCIPAL REGISTER**

PINEAPPLE THINS

GOLDEN CIRCLE LIMITED (AUSTRALIA
COMPANY)
EARNSHAW ROAD, NORTHGATE
QUEENSLAND 4012, AUSTRALIA

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "PINEAPPLE", APART FROM
THE MARK AS SHOWN.

FOR: PROCESSED PINEAPPLE, IN CLASS 29
(U.S. CL. 46).

OWNER OF AUSTRALIA REG. NO. B525740,
DATED 12-21-1989, EXPIRES 12-21-1996.

SER. NO. 74-526,345, FILED 5-18-1994.

MITCHELL FRONT, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,982,930

Registered June 25, 1996

**TRADEMARK
PRINCIPAL REGISTER**

PITA THINS

GRECIAN DELIGHT FOODS, INC. (DELA-
WARE CORPORATION)
1201 TONNE ROAD
ELK GROVE VILLAGE, IL 60007

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "PITA", APART FROM THE
MARK AS SHOWN.

FOR: FLAT BREAD, IN CLASS 30 (U.S. CL.
46).

SN 74-529,350, FILED 5-25-1994.

FIRST USE 8-21-1995; IN COMMERCE
8-21-1995.

DARREN COHEN, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

POCKET THINS

Reg. No. 4,126,741

Registered Apr. 10, 2012

Int. Cl.: 30

TRADEMARK

PRINCIPAL REGISTER

ARNOLD PRODUCTS, INC. (DELAWARE CORPORATION)
255 BUSINESS CENTER DRIVE
HORSHAM, PA 19044

FOR: BAKERY GOODS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 10-20-2011; IN COMMERCE 10-20-2011.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NO. 3,637,950.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POCKET", APART FROM THE MARK AS SHOWN.

SN 85-263,229, FILED 3-10-2011.

JORDAN BAKER, EXAMINING ATTORNEY



David J. Kyfos

Director of the United States Patent and Trademark Office

United States of America
United States Patent and Trademark Office

PROTI-THIN

Reg. No. 4,551,422

NASHUA NUTRITION, LLC (NEW HAMPSHIRE LIMITED LIABILITY COMPANY)
522 AMHERST STREET
NASHUA, NH 03063

Registered June 17, 2014

Int. Cls.: 5, 29, 30 and 32 FOR: PROTEIN SUPPLEMENT SHAKES, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

TRADEMARK

FIRST USE 6-22-2010; IN COMMERCE 6-22-2010.

PRINCIPAL REGISTER

FOR: FRUIT-BASED MEAL REPLACEMENT BARS; FRUIT-BASED MEAL REPLACEMENT BARS FOR BOOSTING ENERGY; PRE-PACKAGED DINNERS CONSISTING OF PRIMARILY OF MEAT, SEAFOOD OR POULTRY SERVED WITH PASTA, RICE AND VEGETABLES; SHAKES; SOUP MIXES; SOUPS; SOUPS AND PREPARATIONS FOR MAKING SOUPS; SOY-BASED SNACK FOODS, IN CLASS 29 (U.S. CL. 46).

FIRST USE 6-22-2010; IN COMMERCE 6-22-2010.

FOR: BEVERAGES WITH A COFFEE BASE; CAPPUCCINO; CHOCOLATE-BASED MEAL REPLACEMENT BARS; CINNAMON ROLLS; COCOA MIXES; COFFEE-BASED BEVERAGES; COOKIES; DESSERT PUDDINGS; ESPRESSO DRINKS; FLAVORED AND SWEETENED GELATINS; FLAVORED, SWEETENED GELATIN DESSERTS; FLAVORINGS FOR BEVERAGES; HIGH-PROTEIN CEREAL BARS; HOT CHOCOLATE; INSTANT DESSERT PUDDINGS; INSTANT PUDDING MIXES; OATMEAL; PACKAGED MEAL KITS CONSISTING PRIMARILY OF PASTA OR RICE; PACKAGED MEAL MIXES CONSISTING PRIMARILY OF PASTA OR RICE; PASTA; RICE-BASED SNACK FOODS; WAFERS, IN CLASS 30 (U.S. CL. 46).

FIRST USE 6-22-2010; IN COMMERCE 6-22-2010.

FOR: SMOOTHIES, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).

FIRST USE 6-22-2010; IN COMMERCE 6-22-2010.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 86-107,949, FILED 11-1-2013.



Michelle K. Lee

Deputy Director of the United States
Patent and Trademark Office

Reg. No. 4,551,422 ALISON POLLACK, EXAMINING ATTORNEY

United States of America
United States Patent and Trademark Office

QTHINS

Reg. No. 4,151,777

Registered May 29, 2012

Int. Cl.: 30

TRADEMARK

PRINCIPAL REGISTER

Q.BEL FOODS LLC (NEW YORK LIMITED LIABILITY COMPANY)
220 PIERMONT AVENUE
NYACK, NY 10960

FOR: CANDY; CHOCOLATE; COOKIES, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-0-2012; IN COMMERCE 1-0-2012.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 85-419,915, FILED 9-12-2011.

AMY C. KEAN, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

United States of America
United States Patent and Trademark Office

QThins

Reg. No. 4,151,778

Registered May 29, 2012

Int. Cl.: 30

TRADEMARK

PRINCIPAL REGISTER

Q.BEL FOODS LLC (NEW YORK LIMITED LIABILITY COMPANY)
220 PIERMONT AVENUE
NYACK, NY 10960

FOR: CANDY; CHOCOLATE; COOKIES, IN CLASS 30 (U.S. CL. 46).

FIRST USE 1-0-2012; IN COMMERCE 1-0-2012.

THE MARK CONSISTS OF THE WORD "QTHINS" IN STYLIZED FONT.

SN 85-419,927, FILED 9-12-2011.

AMY C. KEAN, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 3,637,950

Registered June 16, 2009

**TRADEMARK
PRINCIPAL REGISTER**

SANDWICH THINS

ARNOLD PRODUCTS, INC. (DELAWARE CORPORATION)
300 W. NORTH AVENUE
NORTHLAKE, IL 60164

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "SANDWICH", APART FROM THE
MARK AS SHOWN.

FOR: BREAD, IN CLASS 30 (U.S. CL. 46).

FIRST USE 3-31-2008; IN COMMERCE 3-31-2008.

SER. NO. 77-501,818, FILED 6-18-2008.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

ESTHER A. BORSUK, EXAMINING ATTORNEY

Int. Cl.: 29

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 3,044,541

Registered Jan. 17, 2006

**TRADEMARK
PRINCIPAL REGISTER**

Soy Thins

EAT WELL BE WELL FOODS, INC. (DELAWARE
CORPORATION)

1100 EAST MARINA WAY, SUITE 223

HOOD RIVER, OR 97031

FOR: SOY-BASED SNACK FOODS, IN CLASS 29
(U.S. CL. 46).

FIRST USE 10-15-2003; IN COMMERCE 1-15-2004.

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "SOY", APART FROM THE MARK
AS SHOWN.

SER. NO. 78-363,523, FILED 2-5-2004.

JIM RINGLE, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,718,484

Registered Sep. 22, 1992

**TRADEMARK
PRINCIPAL REGISTER**

STONED WHEAT THINS

NABISCO, INC. (NEW JERSEY CORPORATION)
7 CAMPUS DRIVE
PARSIPPANY, NJ 070540311

FOR: CRACKERS, IN CLASS 30 (U.S. CL. 46).
FIRST USE 8-1-1984; IN COMMERCE
8-1-1984.
OWNER OF U.S. REG. NO. 1,022,799.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "STONED WHEAT", APART
FROM THE MARK AS SHOWN.

SER. NO. 74-210,925, FILED 10-9-1991.

MARGARET HOLTHUSEN, EXAMINING AT-
TORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office **Reg. No. 1,926,608**
Registered Oct. 10, 1995

**TRADEMARK
PRINCIPAL REGISTER**

SWEET THINS

SWEET THINGS, INC. (CALIFORNIA CORPORATION)
1 BLACKFIELD ROAD
TIBURON, CA 94920

FOR: BAKED GOODS; NAMELY, CAKES
AND COOKIES, IN CLASS 30 (U.S. CL. 46).

FIRST USE 11-30-1993; IN COMMERCE
11-30-1993.

OWNER OF U.S. REG. NO. 1,279,121.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "SWEET" , APART FROM THE
MARK AS SHOWN.

SN 74-421,033, FILED 8-4-1993.

ZHALEH KHABIRI, EXAMINING ATTORNEY

United States of America

United States Patent and Trademark Office

THINNY THIN THINS

Reg. No. 3,729,315 SILVER PALATE KITCHENS, INC. (NEW JERSEY CORPORATION)
Registered Dec. 22, 2009 P.O. BOX 512

300 KNICKERBOCKER ROAD
CRESSKILL, NJ 07626

Int. Cl.: 30

FOR: CRACKERS, IN CLASS 30 (U.S. CL. 46).

TRADEMARK
PRINCIPAL REGISTER

FIRST USE 4-30-2009; IN COMMERCE 4-30-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 77-485,970, FILED 5-29-2008.

C. DIONNE CLYBURN, EXAMINING ATTORNEY



David J. Kyfos

Director of the United States Patent and Trademark Office

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,244,724

Registered Jul. 5, 1983

TRADEMARK

Principal Register

VEGETABLE THINS

Nabisco, Inc. (New Jersey corporation)
DeForest Ave.
East Hanover, N.J. 07936

For: CRACKERS, in CLASS 30 (U.S. Cl. 46).
First use Feb. 28, 1979; in commerce Feb. 28,
1979.

Owner of U.S. Reg. Nos. 592,479 and 1,022,799.
No claim is made to the exclusive right to use the
word "Vegetable", apart from the mark as shown.

Ser. No. 358,584, filed Apr. 6, 1982.

JOHN P. RYNKIEWICZ, Examining Attorney

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 3,212,339

Registered Feb. 27, 2007

**TRADEMARK
PRINCIPAL REGISTER**

WATERTHINS

PHILEMON PTY LTD (AUSTRALIA CORPORATION)
UNIT 6/11 DAVID STREET
GATEWAY CORPORATE PARK
DANDENONG, VICTORIA, AUSTRALIA 3175

FOR: PREPARATIONS MADE FROM FLOUR,
NAMELY CRACKERS, BISCUITS AND BREAD
STICKS; CHEESE FLAVORED SNACK FOODS
WHICH ARE CEREAL BASED; AND PASTRIES ,
IN CLASS 30 (U.S. CL. 46).

THE MARK CONSISTS OF STANDARD CHAR-
ACTERS WITHOUT CLAIM TO ANY PARTICULAR
FONT, STYLE, SIZE, OR COLOR.

OWNER OF AUSTRALIA REG. NO. 898296, DA-
TED 12-17-2001, EXPIRES 12-17-2011.

SER. NO. 78-645,873, FILED 6-8-2005.

RAY THOMAS, EXAMINING ATTORNEY

Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent Office

Reg. No. 1,022,799
Registered Oct. 14, 1975

TRADEMARK

Principal Register

WHEAT THINS

Nabisco, Inc. (New Jersey corporation)
425 Park Ave.
New York, N.Y. 10022

For: CRACKERS, in CLASS 30 (U.S. CL. 46).
First use at least as early as Dec. 31, 1947; in commerce
at least as early as Dec. 31, 1947.

Applicant disclaims rights in the word "Wheat" apart
from the mark as shown.

Ser. No. 45,498, filed Feb. 28, 1975.

A. G. DIETZ, Examiner

EXHIBIT 10

To the Declaration of Ami Bhatt

From: Madeleine Anderson
Sent: Sunday, February 06, 2011 6:27 PM CST
To: 'mlasser@cox.net'
Subject: RE: Corn Thins samples for Cinco de May Event
Attachments: Corn_LOCKUP_CMYK.jpg, Corn_LOCKUP_CMYK.eps

Hi Mary,

Thank you this additional information. There should be no issue getting the samples to you by the 15th April. We are not expecting fresh sample stock to be available to mid March, but will send as soon as it is available... so hopefully you should receive by the end of March.

Attached is our logo.

Let me know if you need anything else.

kind regards,

Madeleine.

-----Original Message-----

From: mlasser@cox.net [<mailto:mlasser@cox.net>]
Sent: Friday, 4 February 2011 3:37 AM
To: Madeleine Anderson
Subject: RE: Corn Thins samples for Cinco de May Event

Hi Madeline,

Thank you so much!

The earliest arrival date is now (I have room to store them). The latest arrival date is April 15, 2011.

We expect 1000 participants.

You can ship to the following address:

SCI Solutions
Attention - Mary Lasser
5055 E. Broadway Blvd
Suite B210
Tucson, AZ 85711
(520) 907-1816

Please send me your Logo and I'll get it posted to our website asap. We'll also put the logo on the technical shirts that all the participants receive.

Thank you again for your support!

Mary Lasser
President, Southern Arizona Roadrunners
Race Director, Cinco de Mayo 10K Run/Walk

RF000058

---- Madeleine Anderson <manderson@realfoods.com.au> wrote:

> HI Mary,

>

> Real Foods would be happy to supply you with samples for this event. Just let me know the earliest & latest the samples can arrive + give me delivery details & I will organize for them to be delivered in time.

>

> Many thanks for your comments concerning loving Corn Thins (we love to hear this) & thank you for thinking of us for this opportunity.

>

> kind regards,

>

> Madeleine.

>

> Madeleine Anderson

> Marketing Manager

> Real Foods Pty Ltd

> 47 Campbell Rd, St Peters, NSW 2044 Australia

> Ph: +61 2 8595 6663, Fax: +61 2 8595 6601

> www.cornthins.com

> Uncompromised Natural Enjoyment

>

>

>

>

> -----Original Message-----

> From: mlasser@cox.net [<mailto:mlasser@cox.net>]

> Sent: Thursday, 3 February 2011 9:30 AM

> To: REALFOODS

> Subject: Contact Us Form

>

>

> Title: Ms

> First Name Mary

> Last Name Lasser

> Email Address: mlasser@cox.net

> Telephone Number:

> Street Address:

> Suburb:

> City: Tucson

> State: Arizona

> Country: USA

> PostCode: 85711

> Feedback: No

> Product Name:

> Store Location:

> Store Name:

> Best Before:

> Comments: I'm the President of the Southern Arizona Roadrunners in Tucson, Arizona. Our mission is to promote health and fitness in Tucson and Southern Arizona through running and walking. Our Cinco Mayo 10K run/walk is on May 1, 2011 with 1000 participants. We're putting together a goody bag for participants and would love to include your Corn Thins product. In exchange for product, we'll include your logo on our website for a year (www.azroadrunners.org) and also put the logo on technical shirts for the event. I love your product and would love to promote it at our event. Thank you for your consideration.

>

> Mary Lasser

> mlasser@cox.net
> (520) 907-1816
> I would like a reply: Yes

> -----

>

>

>

From: Madeleine Anderson
Sent: Wednesday, March 28, 2012 5:44 PM CDT
To: 'drichards@nutracorp.com'
CC: Charlotte Marbus; Anitha Velkur
Subject: RE: Corn Thins photos
Attachments: USA Original.jpg, USA Rice Thins.jpg, USA Corn Thins sesame.jpg, USA Flax and Soy 07.jpg, USA Multigrain 07.jpg

Dear Dan,

This is great news. I have attached images of each of our Traditional **range of Corn Thins**. Due to the size of the high res images I will send the **flavoured Corn Thins images separately** (I am not sure if your stores also stock these).

Feel free to let me know if you need anything else.

kind regards,

Madeleine.

Madeleine Anderson
Marketing Manager
Real Foods Pty Ltd
47 Campbell Rd, St Peters, NSW 2044 Australia
Ph: +61 2 8595 6663, Fax: +61 2 8595 6601
www.cornthins.com
Uncompromised Natural Enjoyment

-----Original Message-----

From: drichards@nutracorp.com [<mailto:drichards@nutracorp.com>]
Sent: Thursday, 29 March 2012 9:37 AM
To: REALFOODS
Subject: Contact Us Form

Title: Mr
First Name dan
Last Name richards
Email Address: drichards@nutracorp.com
Telephone Number: 435-655-6152
Street Address:
Suburb:
City:
State: Utah
Country: USA
PostCode:
Feedback: No
Product Name:

RF000088

Store Location:

Store Name:

Best Before:

Comments: My name is Dan Richards and I work for Nutraceutical Corporation in Park City, Utah. Our company owns several natural markets in the San Francisco area and my department (Woodland Publishing) is responsible for creating bi-monthly newsletters which include featured items. For the months of May and June, Real Foods Corn Thins all varieties will be among those products. We include photos of each item to increase sales.

Could you please send me hi-res photos of each flavor? If photos are not available, front panels will do. Unfortunately I will need them in the next day or so. Thank you.

I appreciate your help and we look forward to promoting your product.

All the best

Dan Richards

I would like a reply: Yes

RF000089

From: Madeleine Anderson
Sent: Sunday, February 21, 2010 5:55 PM CST
To: 'Jenna2992@yahoo.com'
Subject: RE: Thank you

Dear Jennifer,

What a lovely e-mail.

Thank you so much for taking the time to write to let us know how much you enjoy Corn Thins. We do take pride in the fact that we produce a great tasting product that is actually really healthy (and Gluten Free), but it is much better when we get such words of praise from someone that buys and eats our products.

Concerning Feta & Sundried Tomato, we unfortunately do not yet sell these in the US, but do hope to be doing this some time in the next 12 months.

thank you again.

kind regards,

Madeleine.

Madeleine Anderson
Marketing Manager
Real Foods Pty Ltd
47 Campbell Rd, St Peters, NSW 2044 Australia
Ph: +61 2 8595 6663, Fax: +61 2 8595 6601
www.cornthins.com
Uncompromised Natural Enjoyment

-----Original Message-----

From: Jenna2992@yahoo.com [<mailto:Jenna2992@yahoo.com>]
Sent: Friday, 19 February 2010 12:29 PM
To: REALFOODS
Subject: Contact Us Form

Title: Mrs
First Name Jennifer
Last Name Baker
Email Address: Jenna2992@yahoo.com
Telephone Number:
Street Address:
Suburb:
City:
State:
Country: United States
PostCode:

Feedback: No

Product Name:

Store Location:

Store Name:

Best Before:

Comments: I received your Corn Thins product in a race goody bag about two weeks ago and I wanted to write you and tell you that I really enjoyed your product. Thank you for sharing this with us for I would have never known of your product if I hadn't received it in the goody bag. I actually went out and bought some of the Multigrain flavor. It makes for a great mid afternoon snack with cheese. I will be on the lookout for the Sundried Tomato flavor.

I would like a reply: Yes

From: B S
Sent: Sunday, October 07, 2012 8:37 AM CDT
To: Madeleine Anderson
Subject: Re: Honest Weight Harvest Fest
Attachments: goody bag.png

Thank you for making our Goody Bags and our Harvest Fest a success. Over 3000 people attended this year and the first 300 were thrilled to receive your Corn Thins Samples in the welcome. We look forward to partnering with you again-THANK YOU!

Barbara Stevens
Certified Stress Management Consultant
518-755-5053

From: Madeleine Anderson <manderson@realfoods.com.au>
To: Charlotte Marbus <cmarbus@realfoods.com.au>; hwfchf@yahoo.com
Cc: Anitha Velkur <avelkur@realfoods.com.au>
Sent: Sunday, July 22, 2012 7:41 PM
Subject: RE: Honest Weight Harvest Fest

Dear Barbara,

Thank you for letting Real Foods know about this opportunity. I will organize for 300 Corn Thins samples to be sent to you within the next few weeks for the Goodie Bags.

I will address them to:

Barbara Stevens
Honest Weight Food Coop
484 Central Avenue,
Albany NY 12206.

If this is not correct, please let me know.

thanks again,

Madeleine.

Madeleine Anderson
Marketing Manager
Real Foods Pty Ltd
47 Campbell Rd, St Peters, NSW 2044 Australia
Ph: +61 2 8595 6663, Fax: +61 2 8595 6601
www.cornthins.com
Uncompromised Natural Enjoyment

-----Original Message-----

From: B S [mailto:hwfchf@yahoo.com]

Sent: Saturday, 14 July 2012 4:35 AM

To: b s

Subject: Honest Weight Harvest Fest

On Sunday, September 23, the Honest Weight Food Coop is having our annual Harvest Festival.

As a valuable vendor of the HWFC we would like to help you expand and grow your business with us.

The event draws about 3,000 attendees to Washington Park in Albany, NY and provides a wonderful opportunity to showcase our vendors, and their great natural products. We hand out "Goodie Bags" to the first 300 attendees through the gate.

How can we help you to showcase your company? Is there a product sample, or promotional item, that you would like to donate to this event?

Please, contact Barbara Stevens at this email or at 518-755-5053.

I'll be following up in the next few weeks, Thank you for your continued support!

Barbara Stevens

Certified Stress Management Consultant

518-755-5053

RF000598



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AUGUST 15, 2012

🌱 Healthy Snacking: Real Foods Organic Corn Thins



I recently returned from a [backpacking trip](#) with my daughter. Her favorite snack on the trip was [Real Foods Organic Corn Thins](#).

Original Corn Thins contain the great taste of golden sun-ripened corn, and are made simply by popping grains of maize under high temperature. Prepared with a great recipe for maximum crunch and flavour, they taste sensational on their own or with any number of delicious toppings. With more dietary fibre per gram than wholemeal bread, Original Corn Thins really are good for you.

- 97% fat free
- Made with all natural ingredients
- Free from artificial colours and preservatives
- Gluten free
- GMO free
- Contain 10% dietary fibre

We love to eat Corn Thins plain, but they are also really good with toppings, such as avocado. They are a great alternative to rice cakes and are much tastier.

Read More in: [Food](#) | [Product review](#)

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Posted by Jennifer Lance at August 15, 2012 11:04 AM

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From: Madeleine Anderson
Sent: Monday, May 17, 2010 1:05 AM CDT
To: 'sbarker@semo.net'
CC: Charlotte Marbus
Subject: RE: Real Food Corn Thins sample packs

Dear Mr Barker,

Thank you for taking the time to contact us here at Real Foods.

We do not currently sell the sample pack, just use it for sampling (driving awareness of Corn Thins) at the moment.

We may consider sending you some samples for your event, dependent on what supplies of samples we currently have on hand, and if I think the event you are running is ideal for Corn Thins sampling.

Could you please send me simple details of the Cycle event (when, where, type of ride, number of entrants expected, demographics of entrants, etc). Once I have this information I will quickly let you know whether we will be able to supply samples or not.

kind regards,

Madeleine.

Madeleine Anderson
Marketing Manager
Real Foods Pty Ltd
47 Campbell Rd, St Peters, NSW 2044 Australia
Ph: +61 2 8595 6663, Fax: +61 2 8595 6601
www.cornthins.com
Uncompromised Natural Enjoyment

-----Original Message-----

From: sbarker@semo.net [<mailto:sbarker@semo.net>]
Sent: Sunday, 16 May 2010 6:14 AM
To: REALFOODS
Subject: Contact Us Form

Title: Mr
First Name Silvey
Last Name Barker
Email Address: sbarker@semo.net
Telephone Number: 573-649-3425
Street Address:
Suburb:
City: East Prairie
State: Missouri
Country: USA

RF002239

PostCode: 63845

Feedback: No

Product Name:

Store Location:

Store Name:

Best Before:

Comments: We are looking for sample packets of your product, Corn Thins, for including in our registrants packets at our June ride, Tour de Corn. I have called a local supplier, and they could not find info regarding a sample pack or the anytime 4-slice pack. We are needing several hundred packs - depending on the price.

I would like a reply: Yes

From: Madeleine Anderson
Sent: Sunday, June 05, 2011 8:10 PM CDT
To: 'cschalk@cr.k12.ia.us'
Subject: RE: Thank you

Dear Corinne,

Thank you so much for taking the time to write us such a lovely e-mail. It is great to hear that your daughter loves Corn Thins, and they are making life on a gluten free diet a bit easier.

Thank you again & have a wonderful day.

kind regards,

Madeleine.

Madeleine Anderson
Marketing Manager
Real Foods Pty Ltd
47 Campbell Rd, St Peters, NSW 2044 Australia
Ph: +61 2 8595 6663, Fax: +61 2 8595 6601
www.cornthins.com
Uncompromised Natural Enjoyment

-----Original Message-----

From: cschalk@cr.k12.ia.us [<mailto:cschalk@cr.k12.ia.us>]
Sent: Sunday, 5 June 2011 7:52 AM
To: REALFOODS
Subject: Contact Us Form

Title: Mrs
First Name Corinne
Last Name Schalk
Email Address: cschalk@cr.k12.ia.us
Telephone Number:
Street Address: 424 Crestview Drive
Suburb:
City: Center Point
State: Iowa
Country: USA
PostCode: 52213
Feedback: No
Product Name:
Store Location:
Store Name:
Best Before:

Comments: These corn cakes are the best! Our daughter is a very picky eater and is on a strict gluten free diet. There are very few foods that she will eat. They stopped importing her corn cakes made by Mrs.

Crimbles recently and we didn't know what we would do. We were so glad to see that your product is similar and that she loves them. Thank you so much for having them available in Iowa!
I would like a reply: Yes

From: Charlotte Marbus
Sent: Wednesday, December 07, 2011 12:48 AM CST
To: 'coullman70@yahoo.com'
CC: Madeleine Anderson; Mike Wheeler (IFA) (E-mail)
Subject: Shaw's in Groton, MA - don't carry Corn Thins any more
Attachments: Shaws Store List Sep 2011.xls, USA.xls

Dear Carolyn,

Thank you for your email.

Shaws' Head Office made the decision to limit the number of stores that will stock Corn and Rice Thins. Additionally it looks like they have also cut the number of varieties down from five to three (Original, Sesame and Rice Thins).

The attached list shows the Shaws' stores that should still be stocking our product and as per this list, the Groton, MA store should have our product. So by copy of this email, I am requesting Mike to organise one of our broker representative to follow up with the store in question, to find out what may be the issue.

Meanwhile, I am attaching a list of stores in Massachusetts that should be stocking our Corn & Rice Thins. Please note that the availability of our product is not only limited to the stores listed in the attached sheet, as the store list has mainly been compiled based on consumer feedback. Our product could be available in many more natural foods stores, we have just not been informed about these as yet.

If none of the stores listed are close enough to where you live, then you could approach the grocery manager of any convenient local natural foods store and request that he or she order the product in for you. They are usually very helpful and responsive once they are aware of the availability of Rice & Corn Thins through United Natural Foods East (UNFI East) or KEHE Distributors (including Tree of Life), who supply these items to most natural foods stores in your area.

As an additional alternative, I can let you know that Corn Thins are available online from:
<http://www.wholeandnatural.com/> and <http://www.amazon.com/Real-Foods-Original-Wheat-Free-5-3-Ounce/dp/B000LKXJW0>.

For now I hope this information will be of help to you, while we wait to hear back from the broker representative that will be following up with this store.

Kind regards,

Charlotte Marbus
Senior Account Executive - North America & Exports
Real Foods Pty Ltd
47 Campbell Rd, St Peters, NSW 2044 Australia
Ph: +61 (0)2 8595 6665, Fax: +61 (0)2 8595 6601
E-mail: cmarbus@realfoods.com.au
www.cornthins.com <<http://www.cornthins.com>>

Please note: Real Foods will be closed between December 23rd, 2011 and January 9th, 2012.

-----Original Message-----

From: Madeleine Anderson
Sent: Wednesday, 7 December 2011 7:25 AM
To: Charlotte Marbus
Subject: FW: Contact Us Form

-----Original Message-----

From: coullman70@yahoo.com [<mailto:coullman70@yahoo.com>]
Sent: Wednesday, 7 December 2011 3:25 AM
To: REALFOODS
Subject: Contact Us Form

Title: Mrs
First Name Carolyn
Last Name Coull
Email Address: coullman70@yahoo.com
Telephone Number: 987-486-8900
Street Address: 9 Oak Ridge Rd
Suburb:
City: Littleton
State: Ma.
Country: USA
PostCode: 01460
Feedback: No
Product Name:
Store Location:
Store Name:
Best Before:

Comments: Shaw's Supermarket in Groton, Ma. is the only place I found your corn cakes....now they don't carry them any more. Where can I find them in my area? I love them and have come to rely on them for my snack time.

I would like a reply: Yes

From: Anitha Velkur
Sent: Monday, May 14, 2012 11:25 PM CDT
To: 'familybookhouse@aol.com'
CC: Madeleine Anderson; Dale Lucas (IFA) (E-mail)
Subject: Corn Thins discontinued by the manufacturer in Colorado :: USA, West
Attachments: USA.xls

Dear Linda

Thank you for your email and for your appreciation for Real Foods Corn Thins.

In response to your query, I am happy to let you know that we have not discontinued Corn Thins. However, we are surprised to read that you are unable to find Corn Thins in your local natural foods store, as we are not having any supply issues. We don't sell our product direct to the stores, they get their supplies through one of our distributors and as far as I know, they are not having any supply issues either. If you could let me know the name and location is of your local store, then I could ask our USA broker team to look into this and find out what may be the issue.

Please find attached list of stores in Colorado that stock some of our Corn & Rice Thins.

Alternatively, you could approach the grocery manager of any convenient local natural foods store and request that he or she order the product in for you. They are usually very helpful and responsive once they are aware of the availability of Corn & Rice Thins through United Natural Foods East (UNFI East), KEHE Distributors or Tree of Life, who supply these items to most natural foods stores in your area.

Please find below the list of distributors who supply Corn & Rice Thins and their item numbers to assist the buyer in ordering the product:

Distributor item numbers	KEHE	UNFI West	Nat. Best
	6pck	6pck	6pck
Original Corn Thins	215157	53336	141077
Flax & Soy Corn Thins	215158	53337	141091
Multigrain Corn Thins	215159	53339	141101
Organic Sesame Corn Thins	215160	53338	141085
Rice Thins	215161	53340	-
Tasty Cheese Flavoured Corn Thins	1278	374	146332

I can also let you know that Corn Thins are available online from:
<http://www.wholeandnatural.com> and <http://www.amazon.com>.

For now I trust this information will be of help to you, however, if you could forward us the details of the store in question, then we can get this miscommunication fixed up.

Regards

RF002760

Anitha

Anitha Velkur

Real Foods Pty Ltd
47 Campbell Rd, St Peters, NSW 2044 Australia
Ph: +61 (0)2 8595 6661, Fax: +61 (0)2 8595 6601
E-mail: avelkur@realfoods.com.au
www.cornthins.com

-----Original Message-----

From: Madeleine Anderson
Sent: Monday, 14 May 2012 2:40 PM
To: Anitha Velkur
Subject: FW: Contact Us Form

-----Original Message-----

From: familybookhouse@aol.com [<mailto:familybookhouse@aol.com>]
Sent: Saturday, 12 May 2012 2:28 AM
To: REALFOODS
Subject: Contact Us Form

Title: Ms
First Name Linda
Last Name Lane
Email Address: familybookhouse@aol.com
Telephone Number:
Street Address:
Suburb:
City:
State: Colorado
Country: USA
PostCode:
Feedback: No
Product Name:
Store Location:
Store Name:
Best Before:

Comments: I've been told by a natural foods store employee here in Colorado that Corn Thins have been discontinued by the manufacturer. Is this so? I really hope it is not because we are a gluten-intolerant family, and we use a lot of them - they're so much better than rice cakes.
I would like a reply: Yes

From: Ellen Karlin
Sent: Monday, April 29, 2013 11:06 AM CDT
To: Madeleine Anderson
Subject: RE: FW: logo

Madeleine-

Thank you for your continued support of my efforts to educate about food allergy and sensitivity!

(I have already found a sponsor for this event)

I do have several other opportunities to present and once I decide how to best apply your sponsorship funds for 2013 I will let you know.

Appreciate this and we will be in touch.

If possible, please send sample product which I can distribute to clients and during presentations to:

Ellen Karlin, RD

Nutrition Consultant

6 Park Center Ct #204

Owings Mills, MD 21117

Best,

Ellen

--- On Mon, 4/29/13, Madeleine Anderson <manderson@realfoods.com.au> wrote:

From: Madeleine Anderson <manderson@realfoods.com.au>
Subject: RE: FW: logo
To: "Ellen Karlin" <karlinldn@yahoo.com>
Date: Monday, April 29, 2013, 1:36 AM

Hi Ellen,

As mentioned previously, Real Foods are happy to sponsor you for \$400 a year for you presenting arrangements, as per last year. If you wish to put our sponsorship against expenses for this presentation, we are happy to do so.

kind regards,

Madeleine.

-----Original Message-----

From: Ellen Karlin [<mailto:karlinldn@yahoo.com>]
Sent: Thursday, 25 April 2013 12:27 AM
To: Madeleine Anderson
Subject: RE: FW: logo

Madeleine-

I have been invited to present to the Nurse Practitioners Association of Maryland in 2013 on the topic of food allergy and intolerance.

I am looking for a sponsor to cover my travel and honorarium request.

Would you be interested in sponsoring my presentation?

Since the meeting is local, I am requesting \$400 to cover my travel and honorarium for this meeting.

Of course, I will be discussing Corn Thins products during my presentation, as we can include a taste testing as well!

Thank you,
Ellen

--- On Wed, 1/30/13, Madeleine Anderson <manderson@realfoods.com.au> wrote

From: Madeleine Anderson <manderson@realfoods.com.au>
Subject: RE: FW: logo
To: "Ellen Karlin" <karlinldn@yahoo.com>
Date: Wednesday, January 30, 2013, 9:16 PM

Hi Ellen,

Thank you for this. I will organize for more Corn Thins samples to be delivered to your office within the next couple of weeks.

Kind regards,

Madeleine.

-----Original Message-----

From: Ellen Karlin [mailto:karlinldn@yahoo.com]
Sent: Thursday, 31 January 2013 3:28 AM
To: Madeleine Anderson
Subject: RE: FW: logo

Madeleine-

That is fine. I will contact you later in the year to discuss possible participation at a conference after July, 2013.

If possible, please send samples of Corn Thins to my office to distribute at presentations and to clients:

Ellen Karlin, RD
6 Park Center Ct #204
Owings Mills, MD 21117
410-979-7165

Thanks and have a wonderful day!
Ellen

--- On Tue, 1/29/13, Madeleine Anderson <manderson@realfoods.com>

From: Madeleine Anderson <manderson@realfoods.com.au>
Subject: RE: FW: logo
To: "Ellen Karlin" <karlinldn@yahoo.com>
Date: Tuesday, January 29, 2013, 11:09 PM

Hi Ellen,

Sorry for the delay in getting back to you.

I will have to look at a conference later in the year, as my initial agreement with (Real Foods owner) was for \$400 a year. As 2012 initial payment was in July I will need to wait till around this time to stay within this agreement.

Hopefully this is not a concern.

kind regards,

Madeleine.

-----Original Message-----

From: Ellen Karlin [mailto:karlinldn@yahoo.com]
Sent: Friday, 18 January 2013 2:05 AM
To: Madeleine Anderson
Subject: RE: FW: logo

Madeleine-

I understand and thank you for your support in 2012.

I am requesting partial sponsorship in the amount of \$400 for a co

Is it possible for you to be my partial sponsor for either this conference in 2013?

Thank you,
Ellen

--- On Wed, 1/16/13, Madeleine Anderson <manderson@realfo

From: Madeleine Anderson <manderson@realfoods.com.au>
Subject: RE: FW: logo
To: "Ellen Karlin" <karlinldn@yahoo.com>
Date: Wednesday, January 16, 2013, 10:39 PM

Hi Ellen,

Happy New Year.

It is great to hear you have been accepted as a speaker for the NYSD
As initially mentioned Real Foods is a small food company so have ve
available to promote our Corn Thins. In saying this speakers with you

invaluable to us. In the future I do hope that Corn Thins will be large e
a majority of your speaking events, but at this time we can only afford
\$400 a year. I realise this may not be suitable due to your experience
my hands are tied till the business grows and the owner (Michael Pels
funds to me.

kind regards,

Madeleine.

-----Original Message-----

From: Ellen Karlin [mailto:karlinldn@yahoo.com]

Sent: Thursday, 17 January 2013 4:10 AM

To: Madeleine Anderson

Subject: RE: FW: logo

Hi Madeleine-

I just received this email from the New York State Dieteti
know if you could help me out with partial sponsorship in
annual session in May, 2013.

Thanks!

From: Michelle Barber <michelle.easterly@gmail.com>

Subject: Re: speaker proposal

To: "Ellen Karlin" <karlinldn@yahoo.com>

Date: Wednesday, January 16, 2013, 11:50 AM

Hi Ellen, Thank you for the submission of your speaker p
interested in having you speak at the NYSDA Annual Me
you might be able to get sponsorship for your presentatio
We were hoping this could be a possibility and wanted to
you.

Best,

Michelle

--- On Thu, 9/20/12, Madeleine Anderson <manderson@

From: Madeleine Anderson <manderson@realfoods.cor

Subject: RE: FW: logo

To: "Ellen Karlin" <karlinldn@yahoo.com>

Date: Thursday, September 20, 2012, 6:30 PM

Thanks Ellen

From: Ellen Karlin [mailto:karlinldn@yahoo.com]

Sent: Fri 9/21/2012 4:57 AM

To: Madeleine Anderson

Subject: RE: FW: logo

Lauren's phone number is (507) 351-8428

Thank you,

Ellen

--- On **Wed, 9/19/12**, Madeleine Anderson <mandersc

From: Madeleine Anderson <manderson@realfoods.c

Subject: RE: FW: logo

To: "Ellen Karlin" <karlinldn@yahoo.com>

Date: Wednesday, September 19, 2012, 5:27 PM

Hi Ellen,

Thank you for this. Could you please give me a contact number for a transport company.

For your delivery I will use the number Phone: (410) 979-7

many thanks,

Madeleine.

-----Original Message-----

From: Ellen Karlin [mailto:karlinldn@yahoo.com]

Sent: Thursday, 20 September 2012 2:03 AM

To: Madeleine Anderson

Subject: Re: FW: logo

Madeleine-

If possible, please send sample Corn Thin sample

Ellen Karlin, Rd

6 Park Center Ct #204

Owings Mills, MD 21117

In addition, please send Corn Thin samples to: I

Roscoe, IL. 61073. (for distribution at the Octo

Thanks so much,

Ellen

--- On **Tue, 8/28/12**, Madeleine Anderson <ma

From: Madeleine Anderson <manderson@rea

Subject: FW: logo

To: moore.laurenlee@gmail.com

Cc: karlinldn@yahoo.com

Date: Tuesday, August 28, 2012, 6:44 PM

RF002959

Dear Lauren,

Please find attached Real Foods Corn Thins logo by Ellen below.

If you need anything else, please let me know.

kind regards,

Madeleine.

Madeleine Anderson
Marketing Manager
Real Foods Pty Ltd
47 Campbell Rd, St Peters, NSW 2044 Australia
Ph: +61 2 8595 6663, Fax: +61 2 8595 6601
www.cornthins.com
Uncompromised Natural Enjoyment

-----Original Message-----

From: Ellen Karlin [mailto:karlinldn@yahoo.com]
Sent: Wednesday, 29 August 2012 8:31 AM
To: Madeleine Anderson
Subject: logo

Madeleine-
Please email company logo to conference planner
moore.laurenlee@gmail.com.
Thank you,
Ellen

--- On Wed, 8/22/12, Madeleine Anderson <

From: Madeleine Anderson <manderson@r
Subject: RE: samples!
To: "Ellen Karlin" <karlinldn@yahoo.com>
Date: Wednesday, August 22, 2012, 9:40 PM

Thanks Ellen

-----Original Message-----

From: Ellen Karlin [mailto:karlinldn@yahoo.com]
Sent: Wednesday, 22 August 2012 1:57
To: Madeleine Anderson
Subject: RE: samples!

Madeleine-
Attached please find invoice for \$100
Thank you for your support,
Ellen

--- On Tue, 7/31/12, Madeleine Anderson wrote:

From: Madeleine Anderson <manderson@realfoods.com>
Subject: RE: samples!
To: "Ellen Karlin" <karlinldn@yahoo.com>
Date: Tuesday, July 31, 2012, 1:23 PM

Hi Ellen,

As Michael has agreed to \$400 spend, I will provide another \$100. Let me know when the conference has some more samples of Corn Thins.

Attached is the Corn Thins logo.

Kind regards,

Madeleine.

-----Original Message-----

From: Ellen Karlin [mailto:karlinldn@yahoo.com]
Sent: Tuesday, 31 July 2012 1:23 PM
To: Madeleine Anderson
Subject: RE: samples!

Madeleine-
Since I only needed \$300 for the conference, I will provide \$100(or maybe \$200) for the conference?

If so, I can send the invoice over.
Thanks,
Ellen

--- On Thu, 7/26/12, Madeleine Anderson <manderson@realfoods.com> wrote:

From: Madeleine Anderson
Subject: RE: samples!
To: "Ellen Karlin" <karlinldn@yahoo.com>
Date: Thursday, July 26, 2012, 1:23 PM

Hi Ellen,

Thank you for this. I will organ
office at the same time as I se

many thanks again,

Madeleine.

-----Original Message-----

From: Ellen Karlin [mailto:kar
Sent: Friday, 27 July 2012 7:1
To: Madeleine Anderson
Subject: samples!

Madeleine-
Julie's phone number
If you would also like
conference brochure,
julieannsteele@hotmail.com
In addition, please see
and local presentation
Ellen Karlin, RD
6 Park Center Ct #204
Owings Mills, MD 21117
410-979-7165
Thanks!
Ellen

RF002962

From: Deer Fields
Sent: Friday, July 26, 2013 7:39 AM CDT
To: Madeleine Anderson; Anna Ferguson
Subject: Re: World Peace Jubilee Oct 17-20, 2013

Hi Madeline,

Thank you! Make sure you email the logo to Anna@worldpeaceyoga.com

Have a great day!

Deer

On Fri, Jul 26, 2013 at 12:25 AM, Madeleine Anderson <manderson@realfoods.com.au> wrote:

Hi Deer,

Real Foods would be happy to organize some vegan Corn Thins for the Jubilee. I will ensure they are with you by the 14th Oct.

kind regards,

Madeleine.

Madeleine Anderson

Marketing Manager

Real Foods Pty Ltd

47 Campbell Rd, St Peters, NSW 2044 Australia

Ph: [+61 2 8595 6663](tel:+61285956663), Fax: [+61 2 8595 6601](tel:+61285956601)

www.cornthins.com

Uncompromised Natural Enjoyment

<https://www.facebook.com/cornthins>

-----Original Message-----

From: Deer Fields [<mailto:vegan222@gmail.com>]

Sent: Thursday, 25 July 2013 1:14 AM

To: Madeleine Anderson

Subject: World Peace Jubilee Oct 17-20, 2013

Dear Madeline,

Hope this email finds you healthy and happy! We are putting on the World Peace Yoga Jubilee <http://www.worldpeaceinc.com/home/jubilee.html> October 17-20th for 250 attendees. This events benefits World Peace Earth Foundation, <http://www.worldpeaceinc.com/home/foundation.html>. As a non profit organization, the foundation offers people to apply for grants for projects that spread veganism.

We would love if you could donate your great, incredible, vegan, gluten free Corn Thin products to use at our 12 meals for the health conscious crowd.

We would put a live link on our site of your logo. Your logo would go on the sponsor flyer and on the program.

If you decide to donate products, send us the value and we'll send you a receipt.

If you can donate, please send it by October 14th to:

World Peace Yoga Jubilee

C/O Deer

8525 Camargo Road

Cincinnati, Ohio 45243

Send your logo to anna@worldpeaceyoga.com.

Email me the value of your donation.

Please let us know if you can help make our event more delicious!

Warm Regards,

Deer Fields

EXHIBIT 11

To the Declaration of Ami Bhatt

← → ↺

yelenasweets.com/2013/06/22/substitute-for-cool-whip/

☆ ☰

Apps

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Google Scholar

Books

GRE Math Question ...

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The Best Business B...

MintLife Blog | Pers...

Commision COI



I try not to buy cool whip. Too processed for me. Anyone ever read the ingredients?


Water, high fructose corn syrup, and hydrogenated oils are the first 3 ingredients followed by chemical terms. So basically it's water fake sugar and oil. Bla. I don't know about you, but I like eating real food, you know, the good stuff.


So, I was limited to what sweets I made. I mean, there's so much yummy looking deserts that call for cool whip, and I had to turn them down. So I have been desperatly trying to find a substitute for cool whip.

So after some searching and experimenting, I've finally found it. With this recipe, it doesn't get watery, and holds its stiff shape, I would say, even better then cool whip. And tastes much much better, and it's nice to know you're not eating chemicals. **It's great for decorating cakes, cupcakes, pies, anything that uses cool whip really.**


There's a couple ways to make it. One way is by using cornstarch and heavy whipping cream. You can check out the recipe [here](#). I used it in my blinchiki. Although that recipe was great, it wasn't perfect. The cornstarch didn't dissolve, and it added a gritty feeling to the cream.

So that led me to this recipe.






Cream Puffs with Custard and Whipped Cream





Basic Sweet Yeast Dough Recipe (drozheyoe testo)




Symiki (Farmers cheese pancakes)

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10:29 AM 12/21/2014

www.foodnetwork.com/recipes/alton-brown/whipped-cream-recipe.html


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Cary Kellogg

15 Jun


After reading the ingredients on the store bought cool whip I decided to make our own. Recipe is quick and easy and much more healthier than the chemical mixture in the store.



stardust4300

1 Jun

I like this but it needs a few upgrades. I added powdered sugar, not SUGAR, it does not blend well. Also I added vanilla bean paste, coconut milk, chocolate when I want different flavors I always stabilize it so it keeps it shape and texture in the fridge for a LONG time. To stabilize you can use cornstarch 1T or gelatin powder. I use silver leaf gelatin sheets which comes kosher also. Never would I buy it..nasty once you make your own.



This recipe is featured in:


Holiday How-Tos

whipping cream
the same thing as

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Introducing the All-New

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Posts To Page

Are you still making the 100 calorie packs? I can't find them anymore.

Like · Comment · Share · 2

Cynthia Kramer ▸ Hostess
March 16 at 1:13am · 🌐

Where are the SusieQs????

Like · Comment · Share · 1

JeffandKayla Dandy ▸ Hostess
March 15 at 6:50pm · Shawnee, OK · 🌐

I wish y'all would bring back the cherry sweet roll instead of having 16 different kind of twinkles.

Like · Comment · Share · 1 1

Johnny Roof ▸ Hostess
March 15 at 5:03pm · 🌐

hostess's version of the swiss cake roll compares not at all to Little Debbie's and cost twice as much for a millionth of enjoyment

Like · Comment · Share

Donna Huenefeld ▸ Hostess
March 15 at 3:19pm · 🌐

what ever happened to the SUZYQ

Like · Comment · Share · 2 1

Christina Cockrell
Today at 5:00pm · 🌐

http://instagram.com/p/DbHBrrnLh/

Like · Comment

Jinx Arte
Today at 2:00pm · 🌐

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Marielana Rizzo Lewis
Today at 12:06pm · 🌐

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👤 Annie

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NOTES

HOSTESS BRANDS, LLC "SWEETEST April 4

POSTS TO PAGE

Timothy D. Toney

Today at 6:48pm

I love love love the orange flavor cups hooked when I was a kid.

Like · Comment

Thomas Kyles

Today at 1:29am

As predicted 2 years ago, unit sizes are still getting smaller, unit... See More

Like · Comment

Posts To Page

×

THESE GO AWAY. OUR CARETS ONLY 201 SEE, THAT'S TERRIBLE!!! I DO NOT WANT TO FIND A NEW FAVORITE!! THE NUMBER ON ONE OF THE PACKAGES. B 100121000 274

Like · Comment · Share 4

RevBrian M Zerkel · Hostess

November 29 at 6:36pm · 🌐

why do the twinkies taste different now?

Like · Comment · Share

Mike O'Reilley · Hostess

November 29 at 4:28pm · 🌐

Bring back Fruit Pie the Magician!!!!

Like · Comment · Share

Brenda Barth · Hostess

November 28 at 6:02pm · 🌐

I FOUND CHOCODILES AT CVS IN CT!!!!

Like · Comment · Share 3

Diana Knight · Hostess

November 27 at 9:35am · Monroe, MI · 🌐

wheres my coupon ?

Like · Comment · Share 1

Patsy Pye · Hostess

November 26 at 8:32pm · 🌐

Love Hostess

Like · Comment · Share 1 1

Randy Harris · Hostess

November 26 at 7:11pm · 🌐

373 people like this.

Write a comment...

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Top Comments ·

Gary Schaffer

Give us a Christmas present by bringing back the Suzy Q's

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2013

2012

2011

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Chat (62)

8:03 PM 12/19/2014

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Timothy D. Toney
Today at 6:48pm 🌐

I love love love the orange flavor cupcake, got hooked when I was a kid.


Like · Comment



Thomas Kyles
Today at 1:29am 🌐

As predicted 2 years ago, unit sizes are still getting smaller, unit... See More

Like · Comment




John Miller
Yesterday at 4:08pm 🌐

I see all kinds of love for Twinkies, Chocolate Cupcakes, HoHos, Din... See More


Like · Comment 1

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Operation Twinkie

👍 Like



Wants and Wishes

👍 Like



Bradleystrong

👍 Like

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Hostess
December 2, 2013 🌐

5,000 Twinkies in one shopping cart? Must be #CyberMonday

amazon

Recommendations Today's Deals Gift Cards Sell Help

Shop by Department Search All twinkies Go

Grocery & Gourmet Food Best Sellers Breakfast Foods Beverages & Coffee Snack Food Baking

Hostess Twinkies
by Hostess
★★★★★ (29,000,000 customer reviews)

Price: \$1.00

In Stock.

Ships from and sold by Hostess.

Hostess Twinkies

1,000,000 from \$99

Share

Quantity: 1 5000 12

\$5,000 - \$114.70 shipping

In Stock. Sold by Hostess

Add to Cart

or


Sign in to turn on 1-Click ordering.

Add to Wish List

Like · Comment · Share 586 59 61 Shares

Hostess
November 28, 2013 🌐

#GobbleGobble



👤 Chat (74)

(3:00) 8:07 PM 12/19/2014

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Twitter, Inc. [US] https://twitter.com/hostess_snacks

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Follow

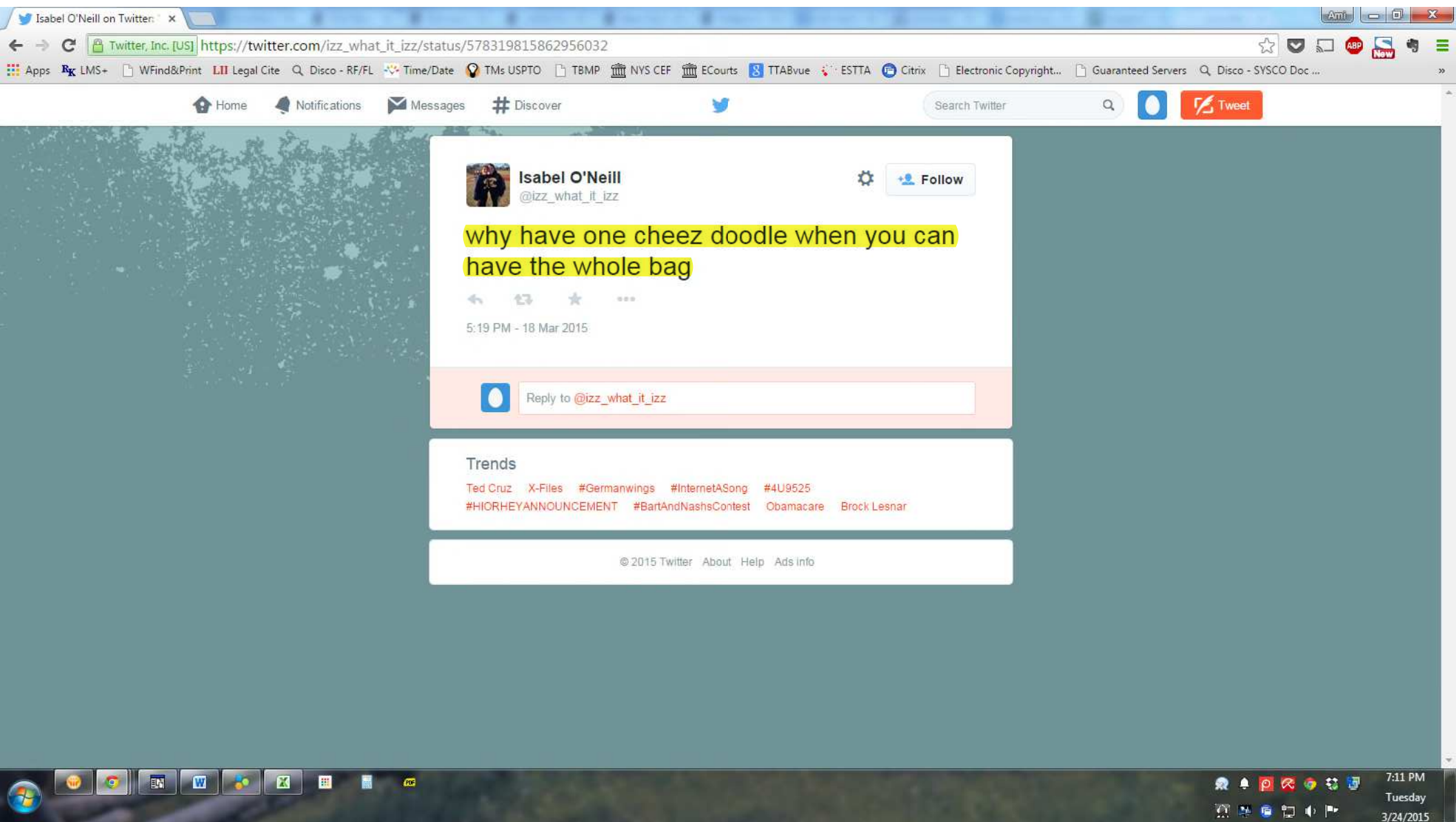
Hostess Snacks @Hostess_Snacks · Nov 8
Need a pick-me-up #FFFFest? We've got you covered with tasty Twinkies! Come say hello. #TwinkiesFFF

Hostess Snacks retweeted
Major League Eating @eatingcontest · Nov 8
RESULTS from @Hostess_Snacks World Twinkie Eating Champs At Bally's Casino-Tunica
1 Matt Stonie 120
2 Joey Chestnut 85
3 Michelle Lesco 48

Hostess Snacks @Hostess_Snacks · Nov 8
Can you believe it?? @MattStonie just ate 120 Twinkies to win The World Twinkie Eating Championship!!!!

Hostess Snacks retweeted
Major League Eating @eatingcontest · Nov 8
4 Badlands Booker 45
5 Yasir Salem 41
6 Nate Biller 36
7 Daniella Gioia 35
8 Matt Raible 27
9 Alex Perez 18

Hostess Snacks retweeted
Major League Eating @eatingcontest · Nov 8
THE WINNER! It's your @Hostess_Snacks World Twinkie Eating Champ



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f Newtons 🔍 Annie Home 7

VIDEO\$

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Rouby Elsebaey
Today at 4:57pm
<https://www.facebook.com/kst.samt.tan>
Like · Comment

Maria Magdalena M Moll
December 15 at 8:24pm
SMITH'S NEWTON FIG NEWTONS TH RUIAN..EPIC GLASSGOW..SCOTLA
Like · Comment

Chris C. Davis
December 15 at 8:13pm
Where the fig did you guys go?

Posts To Page

Lorie Gols ▸ Newtons
September 22 · 🌐
please stop putting high fructose corn syrup in your fig newtons
Like · Comment · Share

Amy Ellis ▸ Newtons
September 18 · Cary, NC · 🌐
Why does your company have to put artificial coloring in the newton cookies??? My husband just found out recently that he is allergic to Red 40. So he can only eat the newtons that don't have that in it. I mean, why does the blueberry newtons have to have it in the ingredients?? Blueberries are naturally colored. It's very disappointing that he can no longer enjoy most of your products. Please consider removing them or using something more natural.
Like · Comment · Share · 👍 1 💬 1

Elizabeth Werle ▸ Newtons
September 14 · Monroe, MI · 🌐
Hi Newtons people! Are your products peanut allergy free?
Like · Comment · Share · 💬 1

Jennifer Benz ▸ Newtons
August 25 · 🌐
Love, LOVE the new fruit Thins! You are geniuses -- I go through two or three packages a week. Love the coconut or the banana fudge. Nice job!
Like · Comment · Share · 💬 1

Alma Morales ▸ Newtons
August 24 · 🌐
What a let-down! I loved taking Nabisco Fig Newtons to work every day. They were tasty and wrapped in a simple package. The new packaging

218 Shares

Earth Day!

Chat (63)

(3:58) 6:51 PM 12/19/2014

Facebook interface showing the DoritosUSA page. The page features a cover photo of a Doritos bag and a profile picture. The main content area displays a list of posts under the heading "POSTS TO PAGE".

POSTS TO PAGE

- David Chrusch** Today at 6:55pm
Doritos should start selling seasoning pepper and shake and bake and in w seasoning. Survey says?
Like · Comment
- Stephanie Ricker** Today at 5:42pm
It would be nice to have cool ranch Doritos ranch on them ... See More
Like · Comment
- Amanda Hampton** Today at 4:46pm
Bring back the Enchilada Supreme Doritos were soooo good!! I check at the store in case.
Like · Comment

Posts To Page

- #DoritosJacked3D #entry** for a chance to receive an exclusive Doritos Jacked 3D gift box
Like · Comment · Share · 2
- Amanda Kozan** Doritos March 18 at 12:22am
I think that Doritos should come up with super hero shapes.....batman superman ect...
Like · Comment · Share · 1
- Jacalyn Miller** Doritos March 17 at 11:29pm
I just bought a bag of doritos that had no flavoring.... cool ranch minus the cool ranch equals tortilla chips
Like · Comment · Share · 1
- William-Robert Kent Cousert** Doritos March 17 at 10:49pm
Why is the new ketchup flavor only available in Canada?
Like · Comment · Share
- Josie Summers** Doritos March 17 at 10:02pm
My daughter made this video of her lil brother eating Doritos and Liust

LIKED BY THIS PAGE

7:50 PM Tuesday 3/24/2015

Browser address bar: <https://www.facebook.com/piratesbooty>

Page title: Pirate's Booty

Left sidebar:

- LIKED BY THIS PAGE
 - Honest Tea
 - Jerry Bruckheimer Films
 - Pirates of the Caribbean
- POSTS TO PAGE
 - GoYid.com
December 18 at 11:26am
Big News! Search-Engine launched for worldwide Jewish business c... See M...
Like Comment
 - Jason the Coupon King
December 14 at 12:50pm
Printable #Coupon <http://wp.me/p3vA...>
Like Comment
 - Jimaras Arelanos
December 12 at 11:16am
<https://www.facebook.com/Pirate Wars>
e?ref=hl all pirates welcome!!!
Like Comment

Posts To Page:

Like Comment Share 1

Jill Lombard Timlin ▸ Pirate's Booty
August 5 · 🌐


I noticed your new bags of pirate's booty and smart puffs no longer list that they're peanut/tree nut free. There's also no longer a note about being made in a peanut/tree nut free facility. Did this change?

Like Comment Share 1

Pirate's Booty was mentioned in a post

Alyssa Darby ▸ Coupon Savvy Sarah
August 4 · 🌐

Got my Pirate's Booty prize today! My son was SOO excited to see all the macaroni and cheese! We go through a lot of it so this really helps! Thanks again for the great giveaway! My son decided to take all the macaroni and cheese out of the boxes and make a "monster truck" with them lol



Let yarr little scallywags make a holiday to-do list with all the fun winter activities they want to do with you. Share yarr lists with us below.


Right sidebar:


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Bottom status bar: 100% battery, 11:30 AM 12/21/2014

instagram.com/p/u_dOEkpSK6/?modal=true

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piratesbooty

2 months ago

Whoever said playing with yarr food was bad manners has never tried #PiratesBooty! Just check out this creation by @T_rez! #regram #ahoy


Follow

trailsend_vb_player, marquardt_20, lea.leilani and 81 others like this.




mkorff9

@sarahdottavio they have an insta




sarahdottavio

@mkorff9 OH MY GOODD




abbyhurley

I had 6 bags if pirates booty last night♥




beautybycate28

I LOVE PIRATES BOOTY




mthresher

Me and my firend came up with a new name we call then pigeons



chloojayyy

הנה @kaaaaaaate_ הנה



kaaaaaaate_

הנה הנה @chloojayyy

Leave a comment...

Windows taskbar with icons for Internet Explorer, File Explorer, Google Chrome, Word, PowerPoint, and a notification icon. System tray shows 100% battery, network status, and time 3:13 PM 12/21/2014.

RF App. 0116

Frosted Mini-Wheats | Facebook

https://www.facebook.com/frostedminiwheats

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Do YOU Love THE Wheats? 964 83

WHICH SIDE

POSTS TO PAGE

Zach Hartzler
Today at 5:47am
Somebody loves mini wheats!
Like · Comment · Share


Deana Ladreh
March 20 at 9:08am
My family and friends and for you to bring... See More
Like · Comment · Share

Mark Groff
March 9 at 7:47am
Bring back the Original Big
smaller ones are not the s
Like · Comment · Share

English (US) · Privacy · Terms · Facebook © 2015

Posts To Page


Somebody loves mini wheats!



Like · Comment · Share · 10 1

Deana Ladreh Gordon · Frosted Mini-Wheats
March 20 at 9:08am ·
My family and friends and everyone i know would love for you to bring back the double sided frosted mini wheats!!! PLEASE WE BEG YOU LOL

are you guys thankful for?



1:17 PM
Monday
3/23/2015

Amazon.com: Kellogg's Fro... x

www.amazon.com/Kellogg's-Frosted-Mini-Wheats-Bite-Size-58-8-Ounce/dp/B001M0A8XG

Kellogg's Frosted Mini-Wheats, Bite-Size Cereal, 58.8-Ounce Box

\$18.92 (\$0.16 / Ounce) Prime Only 20 left in stock. Sold by D&J Shopping Connection and Fulfilled by Amazon. Gift-wrap available.

Add to Cart

had received both bags as advertised.

1 Comment | Was this review helpful to you? Yes No

2 of 2 people found the following review helpful

★★★★★ Great For your money

By Amazon Customer on May 18, 2013

Verified Purchase

This large box of cereal was a super purchase. Would purchase this cereal or any other Kellogg products again. Fantastist value!!!

Comment | Was this review helpful to you? Yes No

2 of 2 people found the following review helpful

★★★★★ if you like large boxes of frosted mini wheats in one box with three separate bags you love these

By Tom(C) on June 25, 2013

Verified Purchase

if you like large boxes of frosted mini wheats in one box with three separate bags you love these mini-wheats

Comment | Was this review helpful to you? Yes No

2 of 2 people found the following review helpful

★☆☆☆☆ overpriced

By Mark Twain on February 7, 2013

Verified Purchase

Cereal is great, but way overpriced online. You can buy the same item at Costco for 8.59 at their store.

Comment | Was this review helpful to you? Yes No

See all 19 customer reviews (newest first)

Write a customer review

Feedback

- ▶ If you have a question or problem, visit our [Help pages](#).
- ▶ If you are a seller for this product and want to change product data, click [here](#) (you may have to sign in with your seller id).

1:09 PM
Monday
3/23/2015

← → ↺

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Alive & Radiant Foods - Kale Krunch & Veggie Krunch

Annie Home 20+

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5


POSTS TO PAGE



Apogee Fit
December 10 at 8:46pm


Please please please make the sea s
mainstay permanent addition....soooo

Like Comment



Dawn Betz
December 7 at 4:37pm

Picked up a package of the Tarragon Dijon for the




Alive & Radiant Foods - Kale Krunch & Veggie Krunch
December 15

Quack of the week from a local White House

Posts To Page

Like Comment Share 1 1




Sophya Smueng ▸ Alive & Radiant Foods - Kale Krunch & Veggie Krunch

August 12

Thanks for the kale krunch! I'm going to bring it along on my weekend warrior activities-- provided I can wait that long before digging in! I can always buy more though 😊



Like Comment Share 1 1

Alive & Radiant Foods - Kale Krunch & Veggie Krunch was mentioned in a post




Native Sun Natural Foods Market added 2 new photos.
August 11

Feels like every week I've got a new favorite snack. Now enjoying Alive & Radiant Foods - Kale Krunch & Veggie Krunch. It's on sale for 3.75 this month (Reg. \$5.75)



Like Comment Share 5



Christie Reneer ▸ Alive & Radiant Foods - Kale Krunch & Veggie Krunch

August 9 - Seattle, WA

Recent


2014

2013


2012

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3:22 PM 12/21/2014


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f Alive & Radiant Foods - Kale Krunch & Veggie Krunch 🔍 Annie Home 20+

Posts To Page

**Krunch & Veggie Krunch**
March 28 · Jackson, MI · 🌐


Tarragon dijon kale krunch is amazing!

Like · Comment · Share

**Walter Ian Kaye** ▸ **Alive & Radiant Foods - Kale Krunch & Veggie Krunch**
March 24 · 🌐


What happened to your amazing buckwheat granola???????

Like · Comment · Share · 💬 1

**Erin Padgett** ▸ **Alive & Radiant Foods - Kale Krunch & Veggie Krunch**
March 22 · 🌐


!! I got my package yesterday, and within the first hour 90% if it was gone!! MMMMNOMNOM! Absolutely delicious!!!! Thank you so so much!!!! 🍴🍴🍴🍴🍴🍴

Like · Comment · Share

**Christy Morgan** ▸ **Alive & Radiant Foods - Kale Krunch & Veggie Krunch**
March 18 · Austin, TX · 🌐


Hi there! I tried emailing your staff at the email you have listed but it bounced back. I'm needing images for an article I'm writing featuring our favorite snacks for Definition For Ladies Magazine. Please let me know who to email! Thanks!

Like · Comment · Share · 💬 3

**Nancy Lynn Maxson** ▸ **Alive & Radiant Foods - Kale Krunch & Veggie Krunch**
March 15 · 🌐


I am a supplement and whole foods educator at Natur-Tyme a local natural foods store in Syracuse, NY. I stumbled upon your product in the local grocery store. I LOVE it!!! And so versatile! You can snack it or

VIDEO'S




5 1

POSTS TO PAGE


**Apogee Fit**
December 10 at 8:48pm · 🌐

Please please please make the sea s...
mainstay permanent addition.....soooo

Like · Comment

**Dawn Betz**
December 7 at 4:37pm · 🌐

Picked up a package of the Tarragon Dijon for the

**Alive & Radiant Foods - Kale Krunch & Veggie Krunch**
December 15 · 🌐

Quoted from the sample from a local #tarragon dijon

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Products invented by real
people like you.



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Network (2-yr activation req'd)

1 Chat (96)

100% 🔊 🔌 📶 📶 📶 📶 3:23 PM 12/21/2014

www.amazon.com/Hostess-Raspberry-Filling-Zingers-Individually/product-reviews/B009M8EZO... Search

By [Raymond](#) on April 7, 2014

Uh, HELLO!! These Zingers have been back on the market for several months now. Why are they still charging \$12 a box for these online when they go for only 3 or 4 dollars in the grocery stores? I'll rate 4 stars for the product but a thumbs down for the price!

[Comment](#) Was this review helpful to you? [Report abuse](#)

0 of 1 people found the following review helpful

★★★★☆ **YUM**

By [Journeygurl "Cassie K"](#) on February 23, 2014

Verified Purchase

Seriously, is there anything amazon doesn't carry? I was so happy to grab two boxes of these once I heard they were not making them anymore...Now, i'm happy.

[Comment](#) Was this review helpful to you? [Report abuse](#)

★★★★★ **dont stop making zingers**

By [P. A. Pittman](#) on August 25, 2013

Verified Purchase

wonderful snacking so good so full of good coconut and delightful raspberry topping. boo hoo please don't stop making raspberry zingers. please **please bring raspberry zingers back**

[Comment](#) Was this review helpful to you? [Report abuse](#)

★☆☆☆☆ **THESE ARE ALL EXPIRED!!!!**

By [Keldon](#) on June 18, 2013

Verified Purchase

These are being sold as COLLECTABLES! They should not be in the grocery section of Amazon. They are all expired and in poor condition. If you are thinking of buying them to eat DON'T DO IT!!!

[Comment](#) Was this review helpful to you? [Report abuse](#)

★★★★☆ **Sweet treat!**

By [kalf167](#) on May 14, 2013

Raspberry zingers are a real sweet treat! I love eating them, definitely my favorite type of Zingers. This is a good price, as these zingers are really, really hard to find in stores. Seems to be that ordering from amazon is the way to go for these!

[Comment](#) Was this review helpful to you? [Report abuse](#)

please bring ^ v Highlight All Match Case 1 of 1 match

Windows taskbar: Internet Explorer, Firefox, Google Chrome, Microsoft Word, Microsoft Excel, Adobe Reader, VLC media player, iTunes, Steam, and system tray with date/time 12:54 PM 3/30/2015.

are you kidding me? i wanted to buy up some zingers before all that was left was 3 year old gunk, well looks like thats all they have, was about half a year expired when i got it(ate em anyway) but still, YOU CANT BE SELLING PEOPLE EXPIRED FOOD. i hope someone gets sick and sues your money grubbing butt...

★★★★☆ hostess raspberry zingers

Hostess makes excellent cup cakes i have always loved these raspberry cream filling zingers. i do wish they still sold them in stores.

★★★★★ I love Zingers.

Awesome. Twinkies with raspberry and coconut. I love these things. To bad their all gone. They have knockoff ones but their not the same. Farewell Hostess. I'll miss you.

★★★★★ Gift

Purchased for 50th birthday gift who is a long time fan and couldn't find them in the area stores, got the fix on the 50th B-day

☆☆☆☆ Zingers tasted like they were old. The exp. date was Dec 25, but had no year.

Zingers tasted like they were old. The exp. date was Dec 25, but had no year. I can see why they were cheaper than the normal purchase.




8

\$7.50




1

\$34.71

How can we make Amazon Customer Reviews better for you?

Let us know here.

$\sin 4$

Great tasting!

Reads: 11,269

10 Overall

These are wonderful! They taste just like moist cake with cream in the middle. **The chocolate zingers are my favorite**, but the vanilla ones are really good too. ... [Show More](#)

Vote review helpful (0)

Report review

Hostess Raspberry Zingers are Delicious,
Light and refreshing

Reads: 224

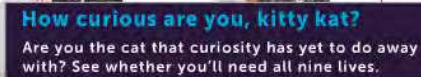
Updated: 11/14/2009

10 Overall


These are sooooo good. A lot of people don't like coconut but the coconut is so light on these you can't even really taste it. There is just enough f... [Show More](#)

Vote review helpful (0)

Report review



Life Reimagined

Roll over to
Take the Quiz 

www.huffingtonpost.com/lawrence-j-hanley/hostess-sale_b_6250650.html

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buys a home that's in disrepair, fixes it up, cuts corners to make upgrades and then sells it for a profit. This is what has happened in communities across the country as working people defaulted on their home loans due to the mortgage crisis. In the case of Hostess, they're doing this for a huge profit and it's a crime.

How come it's worth so much more now than it was in 2012?

That's the part of the story that everyone should know before they buy another Twinkie, Ho Ho or Zinger.

The story begins in 2005, when Hostess convinced its workers to accept major contract concessions to keep the company afloat. To understand how severe this was, consider the report of one employee who said his annual wages decreased more than 30 percent.

In July 2011, Hostess sent its workers a letter saying that it was going to "borrow" the wages from employees to pay into the pension fund until the company was profitable again. They promised to pay it all back.

But, a year later, with unfunded pension liabilities of \$2 billion, the company filed for bankruptcy. The judge in the bankruptcy case ruled that the pension money Hostess took was a debt the bakery couldn't repay.

That's what lawyers call "betrayal without remedy," which loosely translated means "you're screwed and there's nothing you can do about it" — a tune working Americans have heard way too often.


The judge also approved a new, guaranteed base annual salary for its CEO of \$1.5 million, plus cash incentives and "long-term incentive" compensation of up to \$2 million. If Hostess liquidated or the CEO was fired without cause, he'd still get a "golden parachute" (severance pay) of \$1.95 million.

Hostess also received approval from the judge to impose a contract on its workers. Under the imposed contract the wages of the worker mentioned above would take another 30 percent cut over five years. This time the employees had had enough and went on strike.

In response, Hostess shut down its 13 plants and began liquidating its assets, putting its employees out of work. Amazingly, Hostess continued to suck money out of the pension fund for "operations" which allowed them to give \$1.75 million in bonuses to 19 executives.

Having dispatched its employees and plundered their retirement plans, Hostess management sold the company in 2013, to investors Apollo Global Management and C. Dean Metropoulos who brought it out of bankruptcy for **\$410 million**.

The new investors have reopened four of the enterprises 13 plants and have been




Here Are The Amazing Things Your Body Will Do In The Minute You Spend Reading This


[Quick Read](#) | [Comments](#) | 12.18.2014

SUGGESTED FOR YOU


We Can't Believe Kim Let This Happen



Brooke Shields: Hollywood Wasn't My Undoing, Loving My Alcoholic Mother Was




Kylie Jenner Has A New Hair Line, All By Herself



School Helped 'Annoy' Adam Lanza

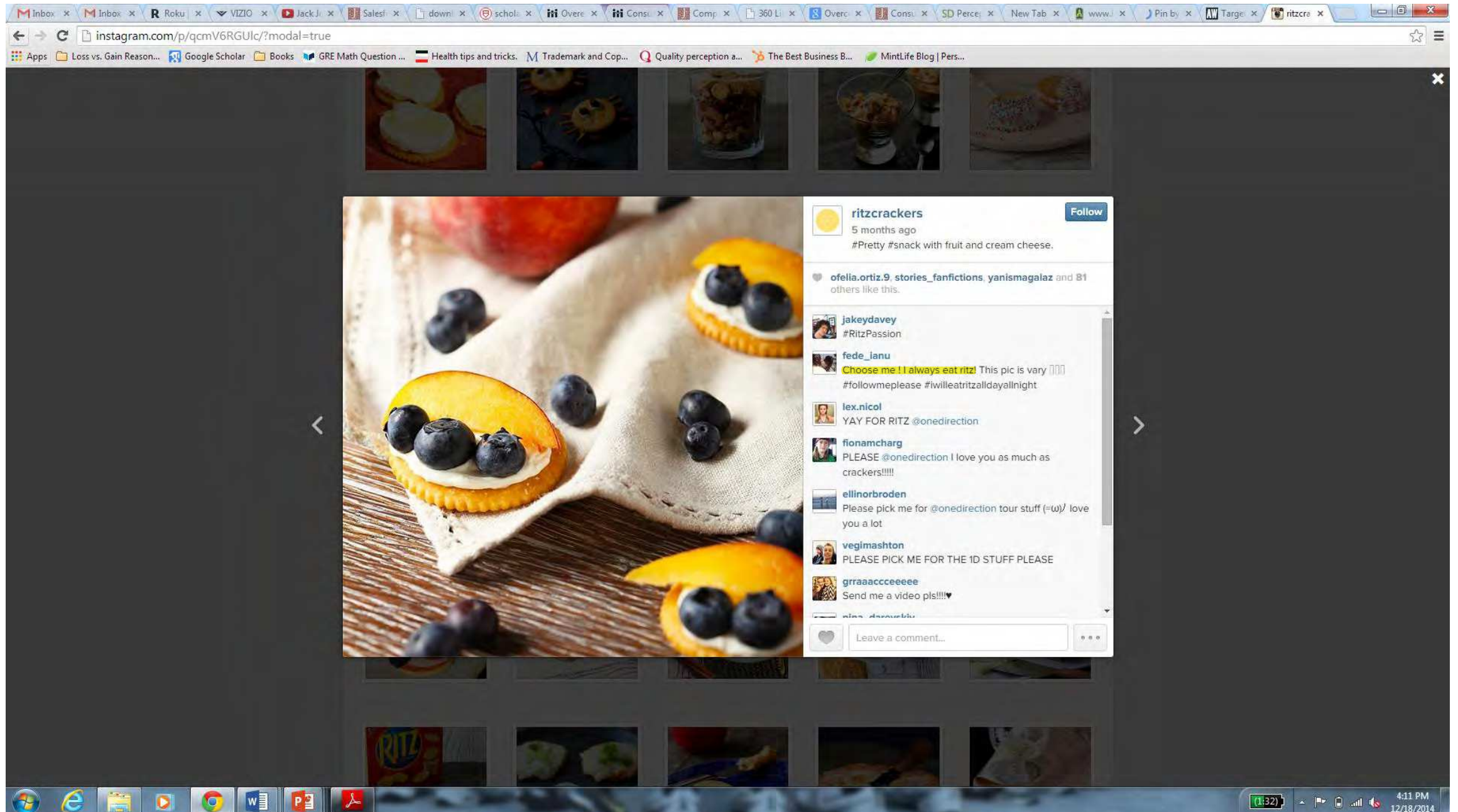
install_flash_player.exe is not commonly downloaded and could be dangerous.

Discard



(3:21)

11:33 PM 12/21/2014



← → ↺

www.houseparty.com/event/triscuit/reviews/page:4/product:49

☆ ☰

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lingmarlena

posted a review on 4/25/14

Takin time

☆☆☆

The cinnamon triscuits were the best especially with chocolate hazelnut dip. Sour cream and chive came in second and the wasabi was third.

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Diane m.

posted a review on 4/25/14

Totally different than your mom's triscuits

☆☆☆☆

Great time trying the new flavors. Everyone really had opinions about the ones they liked!

Like Share

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Join the conversation

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shrontzfamily

posted a review on 4/25/14

Great time and great crackers!!

☆☆☆☆☆

Everyone at the party thought the Sour Cream & Chive were the best. We were NOT fans of the Wasabi and Soy. I think my personal favorite are the Sweet Onion. Wish those had come in our party box. Thanks to everyone who came!

Like Share

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Join the conversation

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pkgrus

posted a review on 4/25/14

Triscuit Tryouts

☆☆☆

Our favourite was the sour cream and chive followed by the cinnamon surger. The

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12:04 PM 12/19/2014

RF App. 0126


bitebitewrite.com/review-nabisco-sea-salt-black-pepper-brown-rice-triscuits/

As a child I hated Triscuits. They were so plain and healthy tasting. Why bother eating something like that when there were options like Goldfish, Better Cheddars, or Combos. As I got older I finally decided to try Triscuits out and to my surprise, they were actually really good.

Enter Nabisco Sea Salt & Black Pepper Brown Rice Triscuits.



Pretty standard Triscuit box here with the exception of it being a bit more brown colored (for brown rice I'm assuming). There's a picture of a Sea Salt & Black Pepper Triscuit along with a bowl of sea salt and a bowl of black peppercorns. The back of the box has a large bowl of brown rice, a sweet potato and some beans. They also advertise some of the other brown rice flavors.



The Triscuit itself looks almost exactly as it does on the box. It's slightly more rectangular than square, but it's close enough. There's visible flakes of black pepper and little grains of salt coating

www.foodchannel.com/articles/article/complain-about-triscuit-get-free-box/

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the foodchannel

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Q- f t p e

topper in my triscuit. Well, now i want to try them without a topper. Can't wait for my free box...

Reply

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bhalovi.com

2 years ago

Triscuit- thrice baked

Reply

Share

bhalovi.com

2 years ago

its a nice pdt

Reply

Share

julie

2 years ago

I have eaten triscuits for many years now and i will admit i have never eaten one plain because they were always advertised as being eaten with cheese or some sort of topping... i demand to have a free box to eat plain and enjoy a pain triscuit.FREE MY TASTE BUDS OF THESES LIES! Thank you and have a nice day.

Reply

Share

brae

2 years ago

I don't need toppings!!!

Reply

Share

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1 comment • 6 months ago

Steve

— not very helpful when you don't say how much of anything!!

Persian Seafood Delight in Shows on The Food Channel®

5 comments • 6 months ago

suzanne

— Can't wait to try it

Ratatouille in Shows on The Food Channel®

1 comment • 3 months ago

sony

— Your article is very informative, specially to the new individual entering to the field.....

Sisters in Thyme in Shows on The Food Channel®

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— Amazing !!!

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EXHIBIT 12

To the Declaration of Ami Bhatt

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Frito-Lay North America, Inc.,	§	
	§	
Opposer,	§	
	§	
v.	§	Opposition No. 91212680 (parent)
	§	Opposition No. 91213587
Real Foods Pty Ltd,	§	
	§	
Applicant.	§	

OPPOSER'S INITIAL DISCLOSURES

Opposer Frito-Lay North America, Inc. ("Opposer"), based on present information and belief, makes the following initial disclosures pursuant to the Trademark Rules of Practice and the Federal Rules of Civil Procedure.

Introductory Statement

The following disclosures are made based on the information reasonably available to Opposer as of this date. By making these disclosures, Opposer does not represent that it is identifying every document, tangible thing, or witness possibly relevant to this proceeding, nor does Opposer waive its rights to object to production of any document or tangible thing disclosed herein on the basis of privilege, the work product doctrine, relevancy, undue burden or any other valid objection. Rather, Opposer's disclosures represent a good faith effort to identify information it reasonably believes may support its claims or defenses as required by the rules.

Opposer's disclosures are made without in any way waiving: (1) the right to object to the use of any such information on the grounds of competency, privilege, relevancy and materiality, hearsay, or any other ground, for any purpose, in whole or in part, in this action or any other action; and (2) the right to object on any and all grounds, at any time, to any other discovery request or proceeding involving or relating to the subject matter of these disclosures.

Opposer provides these disclosures subject to those objections and qualifications.

Witnesses

Opposer identifies the following individuals likely to have discoverable information that

Opposer may use to support its claims:

Pam Forbus
Vice President of Strategic Insights
Frito-Lay North America, Inc.
7701 Legacy Drive
Plano, Texas 75024

Douglas Healy
Customer Insights Sr. Mgr.
Quaker Foods & Snacks
555 West Monroe Street
Chicago, IL 60661

Ms. Forbus and Mr. Healy may be contacted through Opposer's counsel.

Ms. Forbus and Mr. Healy are likely to have information regarding the use of the terms "corn," "rice," and "thins" by Opposer, by Opposer's subsidiaries and affiliates, and by third parties. Ms. Forbus and Mr. Healy are also likely to have information concerning the descriptive or generic nature of the aforementioned terms.

Documents

Opposer expects that documents and materials in its possession, custody, or control that Opposer may use to support its claims will be found in its offices in Plano, Texas and in the offices of its affiliate The Quaker Oats Company, 555 West Monroe Street, Chicago, Illinois 60661. These include documents and materials relating to the use of the terms "corn," "rice," and "thins" by Opposer and by Opposer's affiliates and subsidiaries, along with the descriptive or generic nature of those terms.

Damages

This part of Rule 26(a)(1)(iii) does not apply to proceedings before the Trademark Trial and Appeal Board. *See* TBMP § 401.02.

Insurance

This part of Rule 26(a)(1)(iv) does not apply to proceedings before the Trademark Trial and Appeal Board. *See* TBMP § 401.02.

Respectfully submitted,

By: 

William G. Barber
Paul Madrid
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Fax: (512) 322-5201
bbarber@pirkeybarber.com
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ATTORNEYS FOR OPPOSER
FRITO-LAY NORTH AMERICA INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the OPPOSER'S INITIAL DISCLOSURES has been served via First Class Mail at the address below on March 31, 2014:

Bruce S. Londa
NORRIS, MCLAUGHLIN & MARCUS, P.A.
875 3rd Avenue
New York, NY 10022-6225

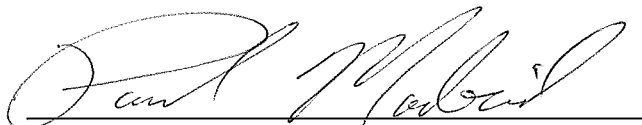

Paul Madrid

EXHIBIT 13

To the Declaration of Ami Bhatt

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application
Serial No. 79111074 for CORN THINS and
Serial No. 85820051 for RICE THINS

FRITO-LAY NORTH AMERICA, INC.,	§	
	§	
Opposer,	§	
	§	
v.	§	Opposition No. 91212680 (Parent)
	§	Opposition No. 91213587
REAL FOODS PTY LTD.,	§	
	§	
Applicant.	§	

OPPOSER’S PRETRIAL DISCLOSURES

Opposer Frito-Lay North America, Inc. (“Opposer”) makes the following pretrial disclosure pursuant to 37 C.F.R. § 2.121(e) of witnesses from whom Opposer intends to take testimony or may take testimony if the need arises during its trial period:

I. The name, telephone number, address, and general identifying information for each witness

- Pam Forbus
Senior Vice President of Global Consumer Demand Insights
PepsiCo. Inc.
7701 Legacy Drive
Plano, Texas 7502
(972) 334-3782
- Douglas Healy
Customer Insights Senior Manager
PepsiCo. Inc.
555 West Monroe Street
Chicago, Illinois 60661
(312) 821-1379
- Robert Frank, Ph. D.
President and Founder
Illuminor LLC
4450 South Park Avenue, #1616

Chevy Chase, Maryland 20815
(301) 789-7685

- Michael Pels
Managing Director
Real Foods Pty Ltd
c/o Norris, McLaughlin & Marcus PA
875 Third Avenue, Eighth Floor
New York, New York 10022-6225
(212) 808-0700
- Diana Rausa
Paralegal
Pirkey Barber PLLC
600 Congress Avenue, Suite 2120
Austin, Texas 78701
(512) 322-5200

II. A general summary or list of subjects on which the witness is expected to testify

Ms. Forbus and Mr. Healy are expected to testify concerning the use of the terms “corn,” “rice,” and “thins” by Opposer, by Opposer’s subsidiaries and affiliates, and by third parties in connection with snack food products. Ms. Forbus and Mr. Healy are also expected to testify concerning the descriptive or generic nature of the aforementioned terms in the snack food industry.

Dr. Frank is expected to testify as an expert witness concerning his qualifications, his opinions that the terms THINS, RICE THINS, and CORN THINS are generic and/or highly descriptive, the bases for those opinions, and the underlying facts and data for those opinions.

Mr. Pels is expected to testify concerning the authenticity and nature of certain documents which Applicant produced in response to Opposer’s discovery requests.

Ms. Rausa is expected to testify concerning the authenticity of screen shots obtained from the Internet and produced to Applicant in this proceeding.

III. A general summary or list of the types of documents and things which may be introduced as exhibits during the testimony of the witnesses

The types of documents and things that may be introduced as exhibits during the testimony of Ms. Forbus and Mr. Healy comprise documents and materials relating to the use of the terms “corn,” “rice,” and “thins” by Opposer, by Opposer’s affiliates and subsidiaries, and by third parties, along with the descriptive or generic nature of those terms. These documents and materials include but are not limited packaging materials, advertisements, and publications.

The types of documents and things that may be introduced as exhibits during Dr. Frank’s testimony comprise his expert report and the exhibits thereto, including but not limited to magazine articles, Internet websites, newspaper articles, and records from the Patent and Trademark Office.

The types of documents and things that may be introduced as exhibits during Mr. Pels’ testimony comprise the documents and things produced by Applicant in response to Opposer’s First Request for Production of Documents and Things and Opposer’s Second Request for Production of Documents and Things.

The types of documents and things that may be introduced as exhibits during Ms. Rausa’s testimony include screen shots obtained from the Internet.

Respectfully submitted,

/Paul Madrid/ Paul Madrid
William G. Barber
Paul Madrid
PIRKEY BARBER PLLC
600 Congress Avenue, Suite 2120
Austin, Texas 78701
(512) 322-5200
bbarber@pirkeybarber.com
pmadrid@pirkeybarber.com
ATTORNEYS FOR OPPOSER
FRITO-LAY NORTH AMERICA, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of OPPOSER'S PRETRIAL DISCLOSURES has been served via first-class mail, postage prepaid, at the address below on January 9, 2015:

Bruce S. Londa
Norris McLaughlin & Marcus PA
875 3rd Avenue, 8th Floor
New York, NY 10022-6225

/Paul Madrid/

Paul Madrid

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

FRITO-LAY NORTH AMERICA, INC.

Opposer,

vs.

REAL FOODS PTY LTD.

Applicant.

Opposition No. 91212680 (Parent)

Opposition No. 91213587

**REPLY DECLARATION OF SARAH BUTLER IN FURTHER SUPPORT OF
APPLICANT REAL FOODS PTY LTD.'S MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO OPPOSER
FRITO-LAY NORTH AMERICA, INC.'S CROSS-MOTION FOR SUMMARY JUDGMENT**

I, Sarah Butler, declare as follows:

1. I am a Vice President working in the Intellectual Property and Survey and Sampling Practices of NERA Economic Consulting (hereinafter, "NERA"), a firm that specializes in providing expert statistical, survey, economic, and financial research analysis.

2. I submit this declaration in further support of the motion for summary judgment filed by Applicant Real Foods Pty Ltd. (hereinafter "Real Foods") and in opposition to the cross-motion for summary judgment filed by Opposer Frito-Lay North America, Inc. (hereinafter "Frito-Lay"). As set forth in detail in my Declaration in Support of Real Foods' Motion for Summary Judgment, NERA was retained by counsel for Real Foods to conduct research to determine whether consumers regard the term "CORN THINS" primarily as a brand name or as a common name. In conducting the research, I employed what is known as a *Teflon* survey design to evaluate the extent to which relevant consumers view the term "CORN THINS" primarily as a brand name for a product (hereinafter the "NERA Survey").¹

¹ The survey is designed in accordance with the methods and format set forth in *E. I. DuPont de Nemours & Co. v. Yoshida Int'l, Inc.*, 393 F.Supp. 502 (E.D.N.Y. 1975).

3. To summarize the results of the NERA Survey, a total of 52 percent of these respondents (114 people) regarded “CORN THINS” as a brand name. The NERA Survey also showed that 32 percent of respondents thought “CORN THINS” was a common name and 16 percent of consumers did not know or had no opinion about whether the term “CORN THINS” was a brand name or a common name. Among those survey respondents who had an opinion, 62 percent thought that “CORN THINS” was a brand name.

I. Dr. David Stewart’s Criticisms of the NERA Survey

4. I understand that Frito-Lay hired Dr. David Stewart to comment on the NERA Survey.² Dr. Stewart inaccurately contends that there are a number of “fatal flaws” which render the NERA Survey “of little probative value.”³ Dr. Stewart asserts that the NERA Survey did not define the universe correctly, excluded too many respondents for not passing the mini-test and did not properly use the controls. Dr. Stewart’s arguments are based on his own opinions, without any supporting data or evidence. Further, his suggested use of the control names demonstrates a fundamental misunderstanding of the *Teflon*-style survey methodology employed in the NERA Survey. I submit this declaration to respond to the criticisms raised in Dr. Stewart’s report and Frito-Lay’s resulting mischaracterization of the NERA Survey, as set forth in greater detail below.

A. Dr. Stewart Presents No Evidence to Support His Theory of the Correct Universe

5. Dr. Stewart asserts that consumers are not aware of the product category “popped corn cakes” and argues that this category is not found in the “common vernacular.”⁴ Dr. Stewart provides no evidence for this assertion other than his own opinion. In fact, Real Foods describes its products as “corn

² Frito-Lay Appendix (“FL App.”) at p. 1650.

³ *Id.* at pp. 1654-55.

⁴ *Id.* at p. 1655

cakes,” which are made when the relevant grains are “popped,” and labels these goods as “popped corn cakes.”⁵

6. This type of product description or categorization is certainly not unfamiliar to consumers because the term “popped” is used to describe many types of snack foods. In fact, Frito-Lay’s product list includes products described as “popped corn bites,”⁶ while Quaker Oats’⁷ product list includes the following product descriptions: “popped rice crisps,” “popped snacks,” and “popped chips.”⁸ In addition, Quaker Oats-owned Mother’s brand markets and sells “popped corn cakes.”⁹

7. Moreover, to support his argument, Dr. Stewart ignores the fact that survey participants identified themselves as past or future purchasers of “popped corn cakes.” He instead bases his assertions on a 2013 industry report entitled “Salty Snacks” in which he says the “popped corn cakes” category is not found.¹⁰ Dr. Stewart has not included this document in his report. Notwithstanding, this *industry* report is not probative of *consumer* perception. There is no evidence that consumers would ever see or classify product categories in the same manner as an industry report, particularly an industry report only available for purchase at a cost of \$3,995.00.¹¹ Further, it should be noted that the industry may not

⁵ See Real Foods, “Original Corn Thins,” available at <http://www.cornthins.com/prodOriginal.aspx>; Real Foods “Making Corn Thins,” available at <http://www.cornthins.com/prodMaking.aspx> (accessed March 27, 2015), (appended hereto as **Exhibit 1**).

⁶ See Frito-Lay, “Simply CHEETOS® Popped Corn Bites White Cheddar Flavored Corn Snacks,” available at <http://www.fritolay.com/snacks/product-page/simply/cheetos-popped-corn-bites-simply-white-cheddar-flavored-corn-snacks>, (accessed March 27, 2015), (appended hereto as **Exhibit 2**).

⁷ I understand that Frito-Lay is a sister company to Quaker Oats.

⁸ See Quaker Oats, “Products,” available at <http://www.quakeroats.com/products.aspx>; “Popped Snacks,” available at <http://www.quakeroats.com/products/rice-snacks/popped-chips/salsa-fresca.aspx>; “Popped” available at <http://www.quakeroats.com/products/rice-snacks/popped/caramel-corn.aspx> (accessed March 27, 2015), (appended hereto as **Exhibit 3**).

⁹ See Amazon, “Mothers Caramel Popped Corn Cakes,” available at <http://www.amazon.com/Mothers-Caramel-Popped-Cakes-6-53-Ounce/dp/B000GZW624>; Mother’s Natural, “Product Locator,” available at http://www.mothersnatural.com/product_locator/ (accessed March 27, 2015), (appended hereto as **Exhibit 4**).

¹⁰ FL App. at p. 1655.

¹¹ See Mintel, “Reports: Salty Snacks-US-January 2013,” available at <http://reports.mintel.com/display/637540/>, (accessed January 6, 2015), (appended hereto as **Exhibit 4**).

classify popped corn or rice cakes in the “salty snacks” category and this alone may provide the reason for why these products are not found in this particular report.

8. Accordingly, Dr. Stewart’s criticism that the NERA Survey failed to define the proper universe is wholly without merit.

B. Dr. Stewart Wrongly Asserts the Mini-Test Used was Confusing and “Atypical”

9. Dr. Stewart also argues that the number of potential respondents screened out for failing the mini-test calls into question the appropriateness of the test and suggests that the test required “a great deal of knowledge of specific products” and was “atypical.”¹² Again, Dr. Stewart presents no evidence, data or citations to confirm his theory. Indeed, the Board has held a mini-test to be critical to an admissible genericness survey because a survey of those who do not understand the difference between a brand name and common name is not probative of the question of whether the tested name is perceived as one or the other.¹³

10. In his report, Dr. Stewart compares the number of participants who completed the survey (221) with the number of participants who failed the mini-test (248) and uses this comparison to suggest that the number of participants failing the mini-test demonstrates that the NERA Survey and its results are unreliable.¹⁴ This comparison is not meaningful. There is no accepted or established standard which indicates the rate at which respondents should pass the mini-test. Rather, for a mini-test to be effective, it must screen out those participants who fail to understand the difference between a brand name and a common name; only those participants who correctly classify the mini-test examples as brand or common names should be permitted to continue on with the full survey, without regard for an arbitrary rate on how many participants should or should not pass the mini-test.¹⁵

¹² FL App.at pp. 1655-56.

¹³ *Jacob Zimmerman v. Nat’l Ass’n of Realtors*, 70 U.S.P.Q.2d 1425, 1435-36, n.15 (TTAB 2004).

¹⁴ FL App. at pp. 1655-56.

¹⁵ See E. Deborah Jay, *Genericness Surveys in Trademark Disputes*, TRADEMARK AND DECEPTIVE ADVERTISING SURVEYS: LAW, SCIENCE, AND DESIGN, 116 (2012) (Shari Seidman Diamond and Jerre B. Swann ed.), stating that “[f]or the results of a Teflon Survey to be meaningful, respondents’

11. Moreover, Dr. Stewart improperly focuses on the 248 individuals who screened out at the mini-test and compares this to the 221 respondents who completed the survey. Dr. Stewart does not point out that in fact a much greater number of respondents were actually screened out because the age/gender/region quota matching their demographic profile was filled. These quotas were set to ensure that a broad range of survey participants with different characteristics were included in the survey. In fact more than three times as many individuals (981) were screened out because the sample already had sufficient representation in their demographic category compared to the number screened out for failing the mini-test. Therefore, Dr. Stewart's criticism that too many individuals who were screened out for failing the mini-test is erroneous and has no bearing on the validity of the NERA Survey.

12. Further, Dr. Stewart criticizes the examples of brand and common names used in the mini-test. Again Dr. Stewart's arguments are without foundation; the examples used in the mini-test were entirely appropriate and provided respondents with relevant examples of brand and generic names for snack food products. The mini-test included a brand name (specifically, CHEEZ DOODLES) that is known, but not necessarily famous,¹⁶ uses an unusual spelling and has been on the market in the United States since the 1950s.¹⁷

13. Dr. Stewart also implies that the inclusion of GRAHAM CRACKER as a common name in the mini-test was confusing to potential respondents because the examples of common names in the "lesson" that preceded the mini-test were one word (specifically "chips" and "crackers") while "graham cracker" is two words. If the inclusion of the name "graham cracker" with two words was the primary

comprehensions of the common-name/brand-name dichotomy ought to be tested. If a Teflon Survey merely asks respondents at the beginning of the survey whether they understand the difference between common names and brand names, the survey should be entitled to little or no weight."

¹⁶ A genericness survey using a famous brand in the mini-test was excluded for suggesting to respondents that only famous names could be brands. See 2 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 12:16, n.2 (4th ed. 2014), citing *Eagle Snacks, Inc. v. Nabisco Brands, Inc.*, 625 F. Supp. 571, 228 USPQ 625 (D.N.J. 1985) (providing a Teflon-type survey that was discounted for including very strong marks which might lead respondents to think that, to qualify as a "brand," a name had to be very strong).

¹⁷ See Wikipedia, "Cheez Doodles," available at http://en.wikipedia.org/wiki/Cheez_Doodles (accessed January 5, 2015).

reason potential respondents did not pass the mini-test, one would expect that the vast majority of the 248 participants screened out did not answer this question correctly. In reality, less than half of potential respondents that screened out at the mini-test stage did so because they incorrectly identified GRAHAM CRACKER as a brand name. Dr. Stewart could have performed this analysis himself as he had the data available and attached it to his report as Exhibit 2.

14. Moreover, it was important to include a common name in the test that was two words to ensure that qualified respondents did not assume that common names were only a single word. Indeed, all of the control terms used in the actual survey (not the mini-test) were two word names, both brand and common, and a clear majority of respondents in the NERA Survey correctly identified “macadamia nuts,” “oyster crackers,” “water crackers,” and “veggie chips” as common names and KALE KRUNCH, PRETZEL WAVES and GRANOLA FLATS as brands. Furthermore, to the extent that a respondent believes that only single words are common names, such a respondent should be disqualified from the survey as this would indicate that he or she does not understand the fundamental difference between brand and common names.

15. Dr. Stewart criticisms of the mini-test and the brands used as examples are wholly unsupported.

C. Dr. Stewart Incorrectly Applies a Confidence Interval to the Survey Results

16. In his report, Dr. Stewart states that the 95 percent confidence interval he contends is applicable to the NERA Survey yields a margin of error of +/- 6.59 percent. He uses this calculation to determine that the rate of consumers identifying CORN THINS as a brand name could be as low as 44.41 percent.¹⁸

17. Dr. Stewart provides no indication of why he believes it is appropriate or meaningful to calculate and present a confidence interval for data that has been collected using non-probability

¹⁸ Dr. Stewart has made a mathematical error and subtracted 7.59, as opposed to 6.59. The correct figure is 45.41 percent.

sampling.¹⁹ Confidence intervals are commonly used in random or probability sampling method surveys; these are surveys in which individuals in a given population have an equal chance of being included in the survey sample.²⁰ Genericness surveys such as *Teflon*-style surveys are not based on probability sampling methods as survey participants are not selected randomly from the general population. Rather such surveys typically rely on non-probability samples where respondents are selected or screened based on criteria established by the survey expert. Given the way data are typically collected in these types of surveys, it would be inappropriate to calculate confidence intervals.²¹ In fact, the American Association for Public Opinion Research (of which Dr. Stewart is a member) cautions against the use of confidence intervals and other measures of statistical inference for non-probability samples.²²

18. Moreover, the methodology employed in the original *Teflon* survey, which has been accepted repeatedly by numerous courts and the Trademark Trial and Appeal Board, did not require or employ the calculation of confidence intervals.²³

19. Accordingly, Dr. Stewart's criticism based on the application of confidence intervals to the data collected in the NERA Survey is inappropriate and misconstrues proper methods of data analysis for a non-probability sample survey such as the NERA Survey.

¹⁹ Non-probability samples, which are typically used in surveys conducted in trademark cases, are those in which the "participants are chosen or choose themselves so that the chance of being selected is not known." See American Association for Public Opinion Research, "Task Force on Non-Probability Sampling," p.1, available at http://www.aapor.org/AAPORKentico/AAPOR_Main/media/MainSiteFiles/FINALLayman_TaskforceonNonprobabilitySampling07-21-13_withLOGO.pdf, (appended hereto as **Exhibit 6**).

²⁰ Excerpt from Diamond, Shari S., "Reference Guide on Survey Research," *Reference Manual on Scientific Evidence Third Edition*, Federal Judicial Center at: [http://www.fjc.gov/public/pdf.nsf/lookup/sciman04.pdf/\\$file/sciman04.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/sciman04.pdf/$file/sciman04.pdf), (appended hereto as **Exhibit 7**).

²¹ *Id.* at p. 244, stating that "[c]onfidence intervals should not be computed" for "surveys conducted for Lanham Act litigation[s]."

²² See Task Force on Non-Probability Sampling, *supra*, at p. 2.

²³ See "Genericness Surveys in Trademark Disputes," *supra*, at p. 112.

D. Dr. Stewart Misuses the Survey Controls

20. Finally, Dr. Stewart improperly argues that the percentages of incorrect responses to the other brand and common names included in the NERA Survey should be used as controls to “net out” any guessing and noise in the CORN THINS results.²⁴ The manner in which Dr. Stewart proposes to use the percentages of incorrect responses to the control items in the NERA Survey, however, is methodologically incorrect and nonsensical. This is demonstrated most clearly by the wide range of “net”²⁵ responses he calculates—a range of 22 percent to 47 percent—as being reflective of the percentage of consumers who perceive CORN THINS as a brand name. While Dr. Stewart asserts this range demonstrates that the instructions of the NERA Survey were confusing to respondents, in truth the range demonstrates that his use of the results from the control names in the NERA Survey is inappropriate.

21. As noted, the NERA Survey generally follows the *Teflon* format, a format well-accepted by the Trademark Trial Appeal Board and federal courts. Generally, the *Teflon* format presents survey respondents with a list of names, and asks those respondents to identify the appropriate classification for each name, namely whether it is a brand or common name. One of the names presented is the name or term at issue, while the others are “controls.” The proper use of control names in a *Teflon*-style survey is explained further in an article to which Dr. Stewart cites in his rebuttal opinion which discussed the *Teflon* case procedure:

After confirming the survey respondents’ understanding of the difference between a brand name and a common name, interviewers read a list of eight words, including the word at issue, or the “test” word (TEFLON), and seven other words that served as “controls” (STP, COKE, JELLO, THERMOS, MARGARINE, REFRIGERATOR, and ASPIRIN). *The control words were used to evaluate the meaningfulness of the responses with respect to TEFLON.*²⁶

²⁴ FL App. at p. 1657.

²⁵ Specifically, Dr. Stewart asserts that the “net” here would be the percentage of responses identifying CORN THINS as a brand name less the percentage of responses identifying that one of the common name controls as a brand name.

²⁶ Excerpt from E. Deborah Jay (2009), “Genericness Surveys in Trademark Disputes: Evolution of Species,” in 99 TRADEMARK REPORTER, p. 1126. (appended hereto as **Exhibit 8**) (emphasis added).

22. Thus, in *Teflon-style* surveys, the rate of incorrect responses to the control names are not deducted from the total percentage of those who identify the test name or term as a brand, but instead are used to determine the meaningfulness of responses to the tested name or term.

23. Indeed, in the NERA Survey, a majority of survey participants correctly categorized the presented control brand names and common names, demonstrating that the instructions for the NERA Survey were not confusing and that the results of the NERA Survey provide probative information regarding the primary significance of CORN THINS to the relevant consuming population.

24. Further, if Dr. Stewart's suggested approach was applied to the original *Teflon* survey, the results of that survey would show ranges between 22 and 63 percent of respondents identifying "TEFLON" as a brand name. In other words, using Dr. Stewart's method, the *Teflon* survey results would have shown as few as 22 percent of consumers recognized it as a brand name, the same rate of 22 percent he calculates for CORN THINS by incorrectly using the controls in the NERA Survey.

25. Thus, Dr. Stewart's rebuttal opinions in this regard are contrary to Board precedent and established procedures set by the *Teflon* case.

II. Conclusions

26. The NERA Survey was designed and executed in accordance with scientific standards and the evidentiary requirements for surveys submitted in a legal proceeding, and the survey provides representative information regarding the primary significance of "CORN THINS" to the relevant consumer population.

27. The NERA Survey demonstrates that the primary significance of the name "CORN THINS" to past and prospective purchasers of popped corn cakes is as a brand name, and not a common (generic) name. A total of 52 percent of respondents thought that "CORN THINS" was a brand name and, of those who have an opinion, 62 percent thought that "CORN THINS" was a brand name.

28. The criticisms presented by Dr. Stewarts are not based on evidence or rely on inappropriate or nonsensical methods for their support. Without evidence, Dr. Stewart suggests that

“popped corn cakes” is not a product known to consumers and is not the correct audience for the product at issue in this matter. He further suggests, without any evidence, that too many respondents screened out of the mini-test. Finally, he calculates confidence intervals and net numbers that are inappropriate for a *Teflon* survey. As discussed above, these criticisms are without merit and do not in any way undermine the reliability of the NERA survey.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 31st day of March, 2015 in San Francisco California.


Sarah Butler
Vice President, NERA

EXHIBIT 1

To the Reply Declaration of Sarah Butler

**Original**Soy & Linseed
(Flax & Soy)

Multigrain

Sesame

Rice Thins

Honey Soy Flavoured
Tasty Cheese Flavoured
Sour Cream & Chives
Flavoured

Making Corn Thins



Original Corn Thins

Original Corn Thins contain the great taste of golden sun-ripened corn, and are made simply by popping grains of maize under high temperature. Prepared with a great recipe for maximum crunch and flavour, they taste sensational on their own or with any number of [delicious toppings](#). With more dietary fibre per gram than wholemeal bread, Original Corn Thins really are good for you.

- 97% fat free
- Made with all natural ingredients
- Free from artificial colours and preservatives
- Gluten free
- Non GMO
- Contain 10% dietary fibre

Ingredients

Discover how natural & healthy the ingredients are in this flavour of Corn Thins.



Nutrition Information

Click here for the nutritional information of this flavour of Corn Thins.



International Packaging

Select your country to view relevant packaging.

USA ▼



REAL FOODS
SINCE 1980

CORN THINS

Multigrain

*Golden sun-ripened corn
with the great taste of
four wholegrains*



Fat Free

22 Calories Per Slice

10% Dietary Fiber

Gluten Free

25 SLICES*

Popped Corn Cakes

NET WT: 5.3oz (150g)

*25 slices on average packed by weight

*Uncompromised Natural Enjoyment*[Home](#) [Corn Thins](#) [Recipe Ideas](#) [What's New](#) [Availability](#) [Company Info](#) [FAQs](#) [Contact Us](#)

Original

Soy & Linseed
(Flax & Soy)

Multigrain

Sesame

Rice Thins

Honey Soy Flavoured

Tasty Cheese Flavoured

Sour Cream & Chives
Flavoured

Making Corn Thins

Real Foods source the best Australian grown ingredients to manufacture Corn Thins and Rice Thins. These products are manufactured in accordance with HACCP Food Quality system requirements, to ensure the safe consumption of products by our consumers.

A measured amount of pre-mixed grain is dropped into a mould. The mould is heated and the grain pops due to the high temperature of the mould.

Making Corn Thins

The popping grain can not escape and it fuses together in the circular shape of the mould that it is contained in. This is how the corn cakes are formed in the grain-popping machines.

About Real Foods / Contact Us

Want to learn more about Real Foods and the company's commitment to bringing you healthy all natural products?

New from Real Foods

What's new from Real Foods? Click here to read about our latest news.



Recipe Ideas

Looking for some delicious topping ideas that are perfect for your Corn Thins? Here are some scrumptious suggestions.

Designed by [Purple Goat Design](#)

EXHIBIT 2

To the Reply Declaration of Sarah Butler


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Simply

Simply put, SIMPLY snacks have a great taste, with no artificial flavors or preservatives to get in the way. They're the ones that make you feel good about sharing with the people you love most!

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Simply RUFFLES® Sea Salted Reduced Fat Potato Chips

Simply SUNCHIPS® Sea Salted Multigrain Chips

+



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**Simply CHEETOS® Popped Corn Bite
White Cheddar Flavored Corn Snack:**

Like 4



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JOIN *the* TEAM

At Frito-Lay, you don't have to choose between good work and good fun — because you know you're creative and love what you do when you have the freedom to do both. [Explore possibilities!](#) »



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EXHIBIT 3

To the Reply Declaration of Sarah Butler

Internet Explorer browser window showing the Quaker Oats website (http://www.quakeroats.com/products.aspx). The address bar shows the URL and the page title is "Products | QuakerOats.com". The search bar contains the text "popped".

The website header includes the Quaker logo and navigation links: **HEALTHY LIVING**, **QUAKER PRODUCTS**, **COOKING & RECIPES**, **ABOUT QUAKER**, and **OATS CENTER OF EXCELLENCE**. A search bar is located on the right with the text "Search Keyword" and a dropdown menu set to "Entire Site".

The main content area displays a grid of product categories and their respective items:

LATEST PRODUCTS	QUAKER HOT CEREALS	QUAKER COLD CEREALS	QUAKER SNACK BARS	QUAKER COOKIES	QUAKER RICE SNACKS	OTHER PRODUCTS
Real Medleys	Old Fashioned Quaker Oats	Life Cereal	Chewy Granola Bars	Oat & Yogurt Sandwich Biscuits	Popped Snacks	Breakfast Shakes
50% Less Sugar Instant Oatmeal Cup	Steel Cut Oats	Life Cereal Cups	Chewy Dipps Granola Bars	Crispy Oatmeal Cookies	Popped Chips	Muffins
Flavored Steel Cut Oatmeal	Quick Oats	Oatmeal Squares	Chewy Yogurt Granola Bars	Breakfast Cookies	Rice Cakes	Corn Meal
Protein Baked Bars	Instant Quaker Oatmeal	Real Medleys Cereal	Big Chewy Granola Bars		Multigrain Fiber	Barley
Protein Instant Oatmeal	Protein Instant Quaker Oatmeal	Real Medleys Granola	Big Chewy Sweet & Salty Granola Bars		Crisps	Granola Bites
	Lower Sugar Instant Oatmeal	Toasted Oat Bran	Chewy 25% Less Sugar Granola Bars			Oatmeal Pancake Mix
	High Fiber Instant Oatmeal	Granola	Chewy 90 Calorie Granola Bars			Tortilla Mix
	Weight Control Instant Oatmeal	Corn Bran Crunch	Real Medleys Bars			
	Organic Instant Oatmeal	King Vitaman Cereal	Quinoa Granola Bars			
	Warm & Crunchy Granola	Puffed	Soft Baked Bars			
	Real Medleys Oatmeal+	Quisp	Protein Baked Bars			
	Instant Quaker Oatmeal Cups		Oatmeal to Go			
	Multigrain Hot Cereal		Oatmeal to Go - High Fiber			
	Hot Oat Bran					
	Grits					

At the bottom of the page, there is a navigation bar with the following links: **ALL PRODUCTS**, **HOT CEREALS**, **COLD CEREALS**, **SNACK BARS**, **COOKIES**, **RICE SNACKS**, **OTHER PRODUCTS**, and **PRODUCT RECOMMENDATIONS**.

The Windows taskbar at the bottom shows the date and time: 4:47 PM, Friday, 3/27/2015.

HEALTHY
LIVINGQUAKER
PRODUCTSCOOKING &
RECIPESABOUT
QUAKEROATS CENTER OF
EXCELLENCE

QUAKER® POPPED CHIPS SALSA FRESCA

★★★★★ 4.2 (13) [Write a review](#)

Ditch that old chip 'n dip. Now you can enjoy the zesty flavor of chips and salsa in a single crunch! Just grab a box of our crispy hummus **popped chips** bursting with fresh flavor for an instant fiesta.

- 3g of fiber grain per serving
- 130 calories per serving
- Made with wholesome chickpeas

? **PRODUCT
FAQ'S**

+ **COMPARE
PRODUCTS**

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REVIEWS & RATINGS

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RELATED ARTICLES



Quaker® Popped - Apple
Cinnamon
★★★★★ (11)



Quaker® Popped - BBQ
★★★★★ (7)



Quaker® Popped -
Caramel Corn
★★★★★ (509)



Quaker® Popped -
Cheddar Cheese
★★★★★ (578)



Quaker® Popped -
Chocolate
★★★★★ (4)



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QUAKER® POPPED CARMEL CORN

★★★★★ 4.7 (509) [Write a review](#)

Whoever invented caramel corn deserves a statue in their honor. In lieu of a national holiday, celebrate with the sweet, buttery crunch of this scrumptiously delicious rice confection. Parade to the nearest store and grab a bag or two.

10g of whole grain per 30g serving (see nutrition information for sodium content)

110 calories per serving

Made with popped whole grain brown rice

Surprisingly Delicious!

Available in 6oz and 3oz bags



[Share](#) [Like](#) 163 people like this. Be the first of your friends.

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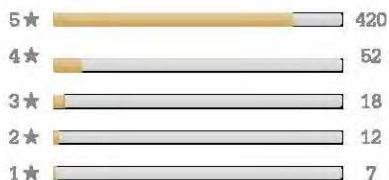
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Reviews

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Rating Snapshot



Average Customer Ratings



1-8 of 509 Reviews

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★★★★★ simikai4 · 20 hours ago

less guilt snack.

I am not a sweet tooth person, so sweet snacks are not my predilect snacks, however I have to say that Popped Caramel Corn flavor was really good, it was not supper sweet like most caramel popped corn, for sure you have a sugar rush, and jump and fly after having that sugary snack, in comparison this Quaker Popped snack was very lightly sweeten not over the top sweet, plus puffy and light not hard like caramel popped corn. I love that this snack contained very low calories, so if you are looking for a lighter snack with sweet caramel flavor, but not over the top, give this Popped Caramel Corn from Quaker a try. I am a #BzzAgent, and I #Gotitfree.

Who is this product for in your household? Household children
How long have you been purchasing Quaker products? Less than 1 year
Where do you typically buy Quaker products? Grocery store

Received Free Product



Helpful? Yes · 0 | No · 0 Report

Comment



★★★★★ **Feeman** · 2 months ago

Quaker Popped Rice Crisps

I received 5 bags of Quaker Popped Rice Crisps from BZZAgent. Two were sour cream and onion, two were cheddar cheese and one was Caramel corn. I Haven't bought any rice crisp snacks before, I thought they looked dry and tasteless. I tried the Caramel corn rice crisps first and was actually very surprised at how good they were. I love Caramel corn and these were really good. They were just right with how sweet they were. And believe it or not, they were not dry. My kids and their friends ate all the bags of rice crisps. They said the cheddar cheese ones taste like puffy Cheetos. I like the fact that they are a healthier choice of snacks also.

Who is this product for in your household? Household children
How long have you been purchasing Quaker products? 20+ years
Where do you typically buy Quaker products? Grocery store

Helpful? Yes · 2 | No · 0 Report

Received Free Product



Comment



★★★★★ **Hustin** · 2 months ago

My kid loves these, but I keep the caramel for me!

I was excited to try this product when I got it free from BzzzAgent. My family really likes Quaker Popped Rice Crisps. We like them for snacking since they are the perfect size and I feel good about offering them as a healthier alternative to chips or crackers. My 8-year old son has starting asking for them next to a sandwich at lunch instead of chips . We love the flavors and the crunch. My son and husband prefer the savory flavors, but my favorite is the caramel. It satisfies my sweet tooth without wrecking my diet. To be fair, my family might prefer the caramel over the other flavors, but I hide them so I can keep them for myself as a treat!

Who is this product for in your household? Myself
How long have you been purchasing Quaker products? 20+ years
Where do you typically buy Quaker products? Grocery store

Helpful? Yes · 1 | No · 0 Report

Received Free Product



Comment



★★★★★ **Mrs4806** · 2 days ago

All 5 kids devoured them!

My neighbors & I were very impressed to watch our 5 kids devour the bags of Quaker Popped Caramel Corn, Cheddar & Sour Cream & Onion. If we had handed them plain rice cakes they would have laughed at us. But the flavors are so good and true to their name that they had no clue that they were eating something good for them. The Cheddar was very cheesy and the Caramel was a sweet delight. The Sour Cream & Onion was also very good but it took me a few of them to appreciate the taste. Which I did. Thank you Quaker for allowing me and my friends and family to sample Quaker Popped for free in exchange for my honest opinion.

Who is this product for in your household? Household children
How long have you been purchasing Quaker products? 20+ years
Where do you typically buy Quaker products? Grocery store

Helpful? Yes · 0 | No · 0 Report

Received Free Product



Comment



★★★★★ **3girls** · 13 days ago

My kids and I fought over this Delicious snack

I was given five bags of the Quacker gluten free popped snack and only one of the caramel and it was our favorite. We wished we were given more. This snack was so not dry and

Received Free Product



tastless like most rice snacks are. These are delicious and full of flavor and hard to put them down. You could easily eat the whole bag. My kids and I fought over the bags and I heard Mom are all of the Quaker popped snacks gone? I want more mom. Please buy more right away. I shared with a friend and she had the same problem. She has two kids with a gluten allergy and they loved how it tasted as they struggle to find a great tasting gluten free snack that is delicious.

Who is this product for in your household? **Myself**
How long have you been purchasing Quaker products? **1-5 years**
Where do you typically buy Quaker products? **Grocery store**

Helpful? **Yes · 0** | **No · 0** **Report**

[Comment](#)



★★★★★ **fortyninemommy** · 2 months ago

Yum for the whole family!

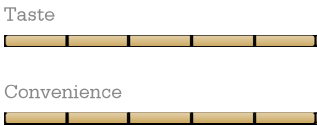
I got the opportunity to try Quaker Popped Rice Crisps through Quaker. I really had not tried these out before so I was excited to get them. I was not disappointed at all! These are delicious!! Not only did I love the caramel flavor, my picky child did as well. They are sweet without being overly so and the flavor was perfect. You could smell the caramel corn scent as soon as the bag was opened. With these being not only gluten free but also low in calories (13 mini cakes for 110 calories? yes please!) they are a great snack and much healthier than other sweets on the market. I will be buying these the next time I hit the grocery store for sure!

Who is this product for in your household? **Myself**
How long have you been purchasing Quaker products? **10-19 years**
Where do you typically buy Quaker products? **Grocery store**

Helpful? **Yes · 0** | **No · 0** **Report**

[Comment](#)

Received Free Product



jessicajus2011 · 2 months ago

I revived my Quaker popped chips in my Bzzkit this month, and the caramel was my least favorite, The other flavors were amazing i loved the texture of the chip but for some reason the caramel was much much crunchier and too hard to chew for my liking.

Helpful? **Yes · 0** | **No · 0** **Report**



★★★★★ **NicoleW** · 2 months ago

Pumped about Popped!!

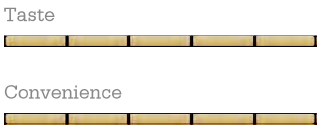
As I opened my bag of Quaker Popped Rice Crisps, I was not sure what was to follow but they sure smelled amazing. I took that first bite and it was as if I had a caramel candy melting in my mouth. The flavor was so rich and spot on for the caramel it advertises. My children don't usually get excited about snacks outside of the norm but they LOVED these and begged that we get them on our next grocery trip. The fact that these are gluten free is a big plus since we do have several friends and friends children that visit, now we will have a GREAT tasting snack for them!! I received these free through a BzzAgent campaign and I am so glad that I did.

Who is this product for in your household? **Other**
How long have you been purchasing Quaker products? **1-5 years**
Where do you typically buy Quaker products? **Grocery store**

Helpful? **Yes · 0** | **No · 0** **Report**

[Comment](#)

Received Free Product



★★★★★ **Moralfy1** · 3 days ago

Love it!!!!!!

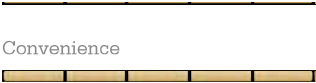
What I like about the Popp rice crispy is there authentic flavors and style, the one that I like more was the caramel flavor because is sweet and crunchy ideal for a nice family,





scary action movie. Not just the flavor that makes it sweet but there style that it don't live crumbs on the floor. And what is best is healthy for us and gluten free, Nice for a side dish or for a snack party, Other flavor that I like too is the sour and cream onion flavor is salty, sour flavor and with this flavor your finger won't feel greasy or stay dirty, my kids loves the cheesy flavor because it taste just like cheese . The popp rice crispy definitely is a great choice for snack.

Who is this product for in your household? Household children
How long have you been purchasing Quaker products? 20+ years
Where do you typically buy Quaker products? Walmart



Helpful? Yes · 0 | No · 0 Report

Comment

1–8 of 509 Reviews



EXHIBIT 4

To the Reply Declaration of Sarah Butler

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Best Sellers

Beverages & Coffee

Snacks

Breakfast

Candy & Chocolate

Gifts

Baking

Specialty Diets

Gluten Free

Special Offers

Grocery & Gourmet Food > Snack Foods > Rice Cakes, Chips & Crackers



Mothers Caramel Popped Corn Cakes, 6.53-Ounce Unit (Pack of 12)

by Mothers
★★★★★ 1 customer review

Price: **\$26.70** (\$2.23 / Item) + \$7.89 shipping

In stock.
Usually ships within 4 to 5 days.
Ships from and sold by **ValoMarket**.

- 6.53 Ounces
- Serving Size:

6 new from **\$26.70**

20% Off Select Nabisco Snacks
Save 20% on select Oreo, Chips Ahoy, Wheat Thins and Ritz. [See more](#)



Click to open expanded view

Share

Qty: 1

\$26.70 + \$7.89 shipping
In stock. Usually ships within 4 to 5 days.
Sold by **ValoMarket**

[Turn on 1-Click ordering](#)

Shipping Address

NY 11351

Other Sellers on Amazon

\$40.18 (\$3.35 / Item)
+ Free Shipping
Sold by: **Save Plus**

\$35.57 (\$2.96 / Item)
+ \$9.39 shipping
Sold by: **AFFORDABLEBUY**

6 new from **\$26.70**

Sponsored by Vega

Vega Snack Bar, Chocolate Peanut Butter...
★★★★★ (71)
~~\$29.79~~ **\$23.89**

[Ad feedback](#)

Customers Who Viewed This Item Also Viewed



Mother's Plain Rice Cakes, No Salt 4.5 oz. (Pack of 12)
★★★★★ 1
\$35.91



Quaker Caramel Corn Rice Cakes
★★★★☆ 2
\$8.99

Customers viewing this page may be interested in these sponsored links [\(What's this?\)](#)

- Quaker® Caramel Corn** - People say it's an "Awesome Snack For the Entire Family". Try Today! www.quakeroats.com/QuakerPopped
- Gourmet Caramel Popcorn** - Delicious Natural **Caramel Popcorn**. Hand Made - Order Online Today! www.fishers-popcorn.com/
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Product Description

Flavored with other natural flavors. 50 Calories each. Fat free. All natural flavored and ingredients make Mother's Caramel Flavored Rice & Popped Corn Cakes a crunchy snack alternative with a delicious caramel flavor. Each wholesome Rice & Popped corn cake contains 50 calories, and is fat free and cholesterol free.

Product Details

Item Weight: 4.8 pounds

Shipping Weight: 6.8 pounds ([View shipping rates and policies](#))

Shipping: This item can only be shipped to the 48 contiguous states. We regret it cannot be shipped to APO/FPO, Hawaii, Alaska, or Puerto Rico.

ASIN: B000GZW624

UPC: 030000168721

Item model number: SPK-1160233

Average Customer Review: ★★★★★ ☒ (1 customer review)

Amazon Best Sellers Rank: #119,432 in Grocery & Gourmet Food ([See Top 100 in Grocery & Gourmet Food](#))

Discontinued by manufacturer: Yes

Would you like to [give feedback on images](#) or [tell us about a lower price](#)?

Important Information

Ingredients

Whole Grain Brown Rice, Corn (With Germ Removed), Unsulphured Molasses, Honey, Natural Flavors, Caramel Color, Salt. May Contain Traces Of Peanuts

Directions

To Restore Crispness: Bake rice & **popped corn cakes** in preheated 200 degree conventional oven only about 5 minutes. Allow the cakes to cool slightly before eating. Do not heat in a toaster or microwave.

Legal Disclaimer

Actual product packaging and materials may contain more and different information than what is shown on our website. We recommend that you do not rely solely on the information presented and that you always read labels, warnings, and directions before using or consuming a product. Please [see our full disclaimer](#) below.

Feedback

- ▶ If you have a question or problem, visit our [Help pages](#).
- ▶ If you are a seller for this product and want to change product data, click [here](#) (you may have to sign in with your seller id).

Product Ads from External Websites (What's this?)

Sponsored Content



Customer Questions & Answers

[See questions and answers](#)

Customer Reviews

★★★★★ (1)
5.0 out of 5 stars

5 star	<div></div>	1
4 star	<div></div>	0
3 star	<div></div>	0
2 star	<div></div>	0
1 star	<div></div>	0

Share your thoughts with other customers

Write a customer review

[See the customer review](#)

Most Helpful Customer Reviews

★★★★★ **Mothers Caramel Popped Corn Cakes 6.53 Ounce Unit (Pack Of 12)**
By [amoursil](#) on February 1, 2014

Verified Purchase

These rice cakes are delicious and all natural without any corn syrup. I enjoy eating them everyday and just received my new order. You should order and enjoy.

[Comment](#) | Was this review helpful to you?

Yes

No

[See the customer review](#)

Write a customer review

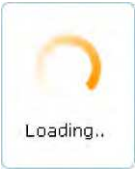


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Nutritious Snack On-the-Go | Non-GMO, Gluten-free



Vega Snack Bar, Chocolate Peanut Butter, 12 Count

★★★★★ (71)
~~\$29.79~~ **\$23.89**

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[Ad feedback](#)

Disclaimer: While we work to ensure that product information is correct, on occasion manufacturers may alter their ingredient lists. Actual product packaging and materials may contain more and/or different information than that shown on our Web site. We recommend that you do not solely rely on the information presented and that you always read labels, warnings, and directions before using or consuming a product. For additional information about a product, please contact the manufacturer. Content on this site is for reference purposes and is not intended to substitute for advice given by a physician, pharmacist, or other licensed health-care professional. You should not use this information as self-diagnosis or for treating a health problem or disease. Contact your health-care provider immediately if you suspect that you have a medical problem. Information and statements regarding dietary supplements have not been evaluated by the Food and Drug Administration and are not intended to diagnose, treat, cure, or prevent any disease or health condition. Amazon.com assumes no liability for inaccuracies or misstatements about products.

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- Sell Your Apps on Amazon
- Become an Affiliate
- Advertise Your Products
- Self-Publish with Us
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- Amazon.com Store Card
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- Amazon Currency Converter

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- Amazon Prime
- Returns & Replacements
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EXHIBIT 5

To the Reply Declaration of Sarah Butler

MINTEL

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Overview



Overview

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Beth Bloom

Food & Drink Analyst

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Salty Snacks - US - January 2015

Salty Snacks - US - January 2013

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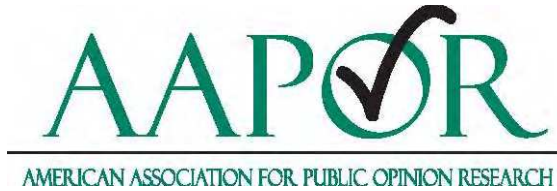
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EXHIBIT 6

To the Reply Declaration of Sarah Butler



Task Force on Non-Probability Sampling

July 2013

EXECUTIVE SUMMARY

For over half a century, survey researchers have relied on probability sampling as the scientific approach to conducting surveys. In a probability sample, everyone in the population of interest (e.g., all registered voters in a political poll) has a chance of being selected for an interview. Knowing those chances is critical to creating valid statistical estimates. At the same time, the number of companies offering surveys using non-probability samples, such as opt-in online polls, has grown considerably. This has led many in the polling and survey communities to wonder under what conditions surveys that use non-probability sampling might be an acceptable alternative to probability-based polls.

In the fall of 2011, the Executive Council of the American Association for Public Opinion Research (AAPOR) appointed the Non-Probability Sampling Task Force to explore the conditions under which surveys not using probability samples might have scientific merit. The task force has released a report about what is currently known about non-probability methods along with recommendations for further study. Its scope and purpose avoid passing judgment on non-probability sampling methods generally, instead providing a roadmap for understanding when a non-probability method might be useful. The full report can be found at www.aapor.org or by clicking [here](#) (or go to <http://bit.ly/16EvssL>).

What are non-probability samples?

Non-probability samples are those in which the participants are chosen or choose themselves so that the chance of being selected is not known. Non-probability designs are used in a wide range of research methods including case-control studies, clinical trials, evaluation research, intercept surveys and opt-in panels, to name a few. Generally speaking, survey researchers have not explored these designs in detail, even though they are widely accepted in applied research fields such as marketing research, program evaluation, and medical research.

Polling results generally are reported as an *estimate* -- such as 60 percent of adults in the U.S. favoring immigration reform -- along with an accompanying *margin of sampling error* (e.g., the margin of sampling error is plus or minus 5 percentage points at the 95 percent level of confidence). *Statistical inference* is the process of interpreting such an estimate in light of its statistical uncertainty. An explicit set of assumptions based on statistical theories is needed to make the estimate and to judge its accuracy. In the above immigration example, the underlying theoretical bases of probability sampling would allow one to conclude that a majority of the U.S. adult population favors immigration reform.

AAPOR cautions that collecting data and producing estimates in the absence of a sound theoretical basis is inappropriate for making statistical inferences. Probability samples enjoy an underlying theory and set of assumptions that are widely known and accepted. This is generally not the case with non-probability methods. Rather, non-probability researchers use their knowledge, experience and/or previous research to model the relationship between key factors they know about the population (e.g., the age, sex and geographic spread of the registered voters) and the specific topic of the study (e.g., vote intention). They use this model to select and/or adjust their non-probability sample in a way that allows statistical insights, *provided of course that the model assumptions hold.* To illustrate, Peter Kellner (2007), founder of YouGov – a company that uses non-probability samples for political polls – discusses their method as follows:

“For our political polls, our computer draws samples that are not only demographically balanced but also politically and attitudinally balanced. That is, drawing on our detailed knowledge of each panel member, we can ensure that our samples contain the right proportions of past Labour, Conservative and Liberal Democrat voters and also the right numbers of the readers of each national newspaper. In Britain, newspaper readership correlates with social and political outlook better than any demographic variable.”

When working with non-probability samples, understanding their underlying assumptions and validating them is a key challenge to statistical inference.

The conclusions in the AAPOR Task Force report are recast and summarized below:

Unlike probability sampling, there is no single framework that adequately covers all of non-probability sampling. Non-probability sampling methods are a “catch-all” group that includes a very wide collection of methods. It is not possible to assign one set of properties to its innumerable incarnations.

While non-probability samples have performed well in some electoral polling, evidence of their accuracy is less clear in other applications (e.g., policy research) and in more complex surveys that measure many different phenomena. Surveys that produce a handful of estimates on a focused topic typically require the control of only a small set of factors (e.g., electoral polling often relies on years of research on voter characteristics and behaviors). However, surveys in general do not have these advantages. A single survey often produces estimates across many subject areas, requiring many more factors to be taken into account. And data on the most important factors may not be readily available.

Non-probability samples may be appropriate for making statistical inferences, but there is a catch: their validity depends on (1) how well the analyst chose the underlying model (i.e., the factors used in drawing or adjusting the sample), and (2) how much the resulting estimates are affected by departures from that underlying model. The report emphasizes a need to further develop theoretical bases for non-probability sampling methods and then to evaluate them. Evaluations should assess the appropriateness of the assumptions and how departures affect the estimates. Post-survey adjustment methods applied to non-probability sampling have largely mirrored efforts in probability samples. Although this may be appropriate and effective to some extent, further consideration of selection bias mechanisms would be helpful.

Transparency is essential. When non-probability sampling methods are used, it is crucial to disclose how the sample was drawn, how the data were collected, and how statistical estimates were developed and inferences reached. Many nonprobability surveys, including those conducted online, consistently fail to provide sufficient information to assess their methodology.

Non-probability sampling approaches fall on a continuum of accuracy of the estimates. Surveys at the lower and upper ends of this continuum are easy to recognize by how much or how little effort went into controlling the sample and adjusting the data. It is harder to identify the accuracy of those non-probability surveys that fall into the middle of the continuum. And depending on where they reside in the continuum, the risks associated with reaching wrong conclusions from these surveys can be great or small. Without knowing how the sample was drawn and the data were processed and adjusted, it is impossible to assess where a non-probability survey falls on the “continuum of accuracy.”

Probability and non-probability surveys rely on modeling assumptions in order to make statistical inference. Those assumptions should be made clear to consumers of the findings and data. Moreover, some discussion of how departures from those assumptions can affect the accuracy of the estimates should be provided.

The most promising non-probability methods for surveys are based on models that try to deal with challenges at both the sampling and estimation stages. Model-based approaches typically assume that survey responses follow a statistical model, e.g., the observations center around an overall average without systematic biases (i.e., errors). These models typically use additional information or data from another source to improve the estimates. The analyst creates statistical estimates and inferences by adopting a model, and their validity depends heavily on how well the analyst chose and used the statistical model.

One reason model-based methods are not more common may be that developing the appropriate models and testing their assumptions is difficult and time-consuming, requiring significant statistical expertise. Assumptions should be evaluated for all key estimates. Unfortunately, a model that works well for one set of estimates (e.g., preference of a political candidate) may not work well for others (e.g., attitudes toward abortion). In contrast, probability sampling methods can produce multiple estimates; this is a hurdle for non-probability sampling methods to overcome.

A concept of Fit-for-Purpose is important for judging survey quality, but its use in designing surveys needs more research and work. Organizations conducting probability samples try to balance a diverse set of *quality characteristics*, including: relevance, accuracy, timeliness, accessibility, interpretability, and consistency. A similar effort is needed for non-probability samples. But ultimately the merit of a non-probability sample will depend on how the data are used to make inferences and decisions (i.e., fit-for-purpose). The concept of fit-for-purpose deserves further development for non-probability samples.

Opt-in panel sampling methods have evolved significantly over time and research to evaluate their validity should focus on the newer sampling methods rather than panels themselves. Opt-in panels may employ different sampling, data collection, and adjustment techniques. Research evaluations of older methods of non-probability sampling from panels may have little relevance to the current, more-sophisticated methods being used today.

If non-probability samples are to become more widely used by traditional survey researchers, the survey industry needs a more coherent framework and accompanying set of measures for evaluating

their quality. A key advantage of probability sampling is the toolkit of measures and constructs (such as Total Survey Error or TSE) that provides ways of understanding quality and error sources. It may not be possible to use the same toolkit to evaluate non-probability samples. The most pressing need is for research aimed at developing better measures of the quality of non-probability sampling estimates that include bias (systematic error) and precision (statistical variation similar to a margin of sampling error).

#

EXHIBIT 7

To the Reply Declaration of Sarah Butler

Reference Guide on Survey Research

SHARI SEIDMAN DIAMOND

Shari Seidman Diamond, J.D., Ph.D., is Professor of Law and Psychology, Northwestern University, Evanston, Illinois, and Senior Research Fellow, American Bar Foundation, Chicago, Illinois.

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In some cases, it is difficult to determine whether an underinclusive universe distorts the results of the survey and, if so, the extent and likely direction of the bias. For example, a trademark survey was designed to test the likelihood of confusing an analgesic currently on the market with a new product that was similar in appearance.⁴⁸ The plaintiff's survey included only respondents who had used the plaintiff's analgesic, and the court found that the universe should have included users of other analgesics, "so that the full range of potential customers for whom plaintiff and defendants would compete could be studied."⁴⁹ In this instance, it is unclear whether users of the plaintiff's product would be more or less likely to be confused than users of the defendant's product or users of a third analgesic.⁵⁰

An overinclusive universe generally presents less of a problem in interpretation than does an underinclusive universe. If the survey expert can demonstrate that a sufficiently large (and representative) subset of respondents in the survey was drawn from the appropriate universe, the responses obtained from that subset can be examined, and inferences about the relevant universe can be drawn based on that subset.⁵¹ If the relevant subset cannot be identified, however, an overbroad universe will reduce the value of the survey.⁵² If the sample is drawn from an underinclusive universe, there is generally no way to know how the unrepresented members would have responded.⁵³

C. How Was the Sample Selected to Approximate the Relevant Characteristics of the Population?

Identification of a survey population must be followed by selection of a sample that accurately represents that population.⁵⁴ The use of probability sampling techniques maximizes both the representativeness of the survey results and the ability to assess the accuracy of estimates obtained from the survey.

Probability samples range from simple random samples to complex multi-stage sampling designs that use stratification, clustering of population elements into various groupings, or both. In simple random sampling, the most basic type

48. *American Home Prods. Corp. v. Barr Lab., Inc.*, 656 F. Supp. 1058 (D.N.J.), *aff'd*, 834 F.2d 368 (3d Cir. 1987).

49. *Id.* at 1070.

50. See also *Craig v. Boren*, 429 U.S. 190 (1976).

51. This occurred in *National Football League Properties, Inc. v. Wichita Falls Sportswear, Inc.*, 532 F. Supp. 651, 657–58 (W.D. Wash. 1982).

52. *Schieffelin & Co. v. Jack Co. of Boca*, 850 F. Supp. 232, 246 (S.D.N.Y. 1994).

53. See, e.g., *Amstar Corp. v. Domino's Pizza, Inc.*, 615 F.2d 252, 263–64 (5th Cir.) (court found both plaintiff's and defendant's surveys substantially defective for a systematic failure to include parts of the relevant population), *cert. denied*, 449 U.S. 899 (1980).

54. MCL 3d, *supra* note 15, § 21.493. See also David H. Kaye & David A. Freedman, Reference Guide on Statistics § II.B, in this manual.

of probability sampling, every element in the population has a known, equal probability of being included in the sample, and all possible samples of a given size are equally likely to be selected.⁵⁵ In all forms of probability sampling, each element in the relevant population has a known, nonzero probability of being included in the sample.⁵⁶

Probability sampling offers two important advantages over other types of sampling. First, the sample can provide an unbiased estimate of the responses of all persons in the population from which the sample was drawn; that is, the expected value of the sample estimate is the population value being estimated. Second, the researcher can calculate a confidence interval that describes explicitly how reliable the sample estimate of the population is likely to be. Thus, suppose a survey tested a sample of 400 dentists randomly selected from the population of all dentists licensed to practice in the United States and found that 80, or 20%, of them mistakenly believed that a new toothpaste, Goldgate, was manufactured by the makers of Colgate. A survey expert could properly compute a confidence interval around the 20% estimate obtained from this sample. If the survey was repeated a large number of times, and a 95% confidence interval was computed each time, 95% of the confidence intervals would include the actual percentage of dentists in the entire population who would believe that Goldgate was manufactured by the makers of Colgate.⁵⁷ In this example, the confidence interval, or margin of error, is the estimate (20%) plus or minus 4%, or the distance between 16% and 24%.

All sample surveys produce estimates of population values, not exact measures of those values. Strictly speaking, the margin of sampling error associated with the sample estimate assumes probability sampling. Assuming a probability sample, a confidence interval describes how stable the mean response in the sample is likely to be. The width of the confidence interval depends on three characteristics:

55. Systematic sampling, in which every n th unit in the population is sampled and the starting point is selected randomly, fulfills the first of these conditions. It does not fulfill the second, because no systematic sample can include elements adjacent to one another on the list of population members from which the sample is drawn. Except in very unusual situations when periodicities occur, systematic samples and simple random samples generally produce the same results. Seymour Sudman, *Applied Sampling*, in *Handbook of Survey Research*, *supra* note 1, at 145, 169.

56. Other probability sampling techniques include (1) stratified random sampling, in which the researcher subdivides the population into mutually exclusive and exhaustive subpopulations, or strata, and then randomly selects samples from within these strata; and (2) cluster sampling, in which elements are sampled in groups or clusters, rather than on an individual basis. Martin Frankel, *Sampling Theory*, in *Handbook of Survey Research*, *supra* note 1, at 21, 37, 47.

57. Actually, since survey interviewers would be unable to locate some dentists and some dentists would be unwilling to participate in the survey, technically the population to which this sample would be projectable would be all dentists with current addresses who would be willing to participate in the survey if they were asked.

1. the size of the sample (the larger the sample, the narrower the interval);
2. the variability of the response being measured; and
3. the confidence level the researcher wants to have.

Traditionally, scientists adopt the 95% level of confidence, which means that if 100 samples of the same size were drawn, the confidence interval expected for at least 95 of the samples would be expected to include the true population value.⁵⁸

Although probability sample surveys often are conducted in organizational settings and are the recommended sampling approach in academic and government publications on surveys, probability sample surveys can be expensive when in-person interviews are required, the target population is dispersed widely, or qualified respondents are scarce. A majority of the consumer surveys conducted for Lanham Act litigation present results from nonprobability convenience samples.⁵⁹ They are admitted into evidence based on the argument that nonprobability sampling is used widely in marketing research and that “results of these studies are used by major American companies in making decisions of considerable consequence.”⁶⁰ Nonetheless, when respondents are not selected randomly from the relevant population, the expert should be prepared to justify the method used to select respondents. Special precautions are required to reduce the likelihood of biased samples.⁶¹ In addition, quantitative values computed from such samples (e.g., percentage of respondents indicating confusion) should be viewed as rough indicators rather than as precise quantitative estimates. Confidence intervals should not be computed.

58. To increase the likelihood that the confidence interval contains the actual population value (e.g., from 95% to 99%), the width of the confidence interval can be expanded. An increase in the confidence interval brings an increase in the confidence level. For further discussion of confidence intervals, see David H. Kaye & David A. Freedman, Reference Guide on Statistics § IV.A, in this manual.

59. Jacob Jacoby & Amy H. Handlin, *Non-Probability Sampling Designs for Litigation Surveys*, 81 Trademark Rep. 169, 173 (1991). For probability surveys conducted in trademark cases, see *National Football League Properties, Inc. v. Wichita Falls Sportswear, Inc.*, 532 F. Supp. 651 (W.D. Wash. 1982); *James Burrough, Ltd. v. Sign of Beefeater, Inc.*, 540 F.2d 266 (7th Cir. 1976).

60. *National Football League Properties, Inc. v. New Jersey Giants, Inc.*, 637 F. Supp. 507, 515 (D.N.J. 1986). A survey of members of the Council of American Survey Research Organizations, the national trade association for commercial survey research firms in the United States, revealed that 95% of the in-person independent contacts in studies done in 1985 took place in malls or shopping centers. Jacoby & Handlin, *supra* note 59, at 172–73, 176.

EXHIBIT 8

To the Reply Declaration of Sarah Butler

The Trademark Reporter®

The Law Journal of the International Trademark Association



No Trolls Barred: Trademark Injunctions After *eBay*

David H. Bernstein and Andrew Gilden

Delay in Filing Preliminary Injunction Motions:
2009 Edition

Sandra Edelman

Genericness Surveys in Trademark Disputes:
Evolution of Species

E. Deborah Jay

Space Pirates, Hitchhikers, Guides,
and the Public Interest:
Transformational Trademark Law in Cyberspace

Thomas C. Folsom

The Identification of Trademark Filing Strategies:
Creating, Hedging, Modernizing,
and Extending Brands

Philipp G. Sandner

Vol. 99

September-October, 2009

No. 5

GENERICNESS SURVEYS IN TRADEMARK DISPUTES: EVOLUTION OF SPECIES*

*By E. Deborah Jay***

I. INTRODUCTION

In the seminal *Bayer* aspirin case in 1921, Judge Learned Hand applied the following test in deciding that ASPIRIN had become generic: “What do the buyers understand by the word for whose use the parties are contending?”¹ This test became codified in the Trademark Clarification Act of 1984, which stated, “The primary significance of the registered mark to the relevant public . . . shall be the test for determining whether the registered mark has become the generic name of goods or services on or in connection with which it has been used.”²

Many types of evidence may be proffered in trademark disputes on the issue of whether a mark is or has become generic.³

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** President/CEO, Field Research Corporation, San Francisco, CA. Dr. Jay has conducted numerous surveys on behalf of plaintiffs and defendants in trademark and advertising disputes, testified in federal courts in intellectual property cases, and been qualified by many state and federal courts as an expert in survey methods. Dr. Jay would like to thank Hugh Anthony Levine, Esq. for his assistance and invaluable contribution to this article.

1. *Bayer Co., Inc. v. United Drug Co.*, 272 F. 505, 509 (S.D.N.Y. 1921) (“The single question, as I view it, in all cases, is merely one of fact: What do the buyers understand by the word for whose use the parties are contending? If they understand by it only the kind of goods sold, then, I take it, it makes no difference whatever what efforts the plaintiff has made to get them to understand more. He has failed, and he cannot say that, when the defendant uses the word, he is taking away customers who wanted to deal with him, however closely disguised he may be allowed to keep his identity.”).

2. Pub. L. 98-620 § 102, 98 Stat. 3335 (1984) (codified at 15 U.S.C. § 1064(3)); *see also* *Kellogg Co. v. Nat’l Biscuit Co.*, 305 U.S. 111, 118 (1938) (“But to establish a trade name in the term ‘shredded wheat’ the plaintiff must show more than a subordinate meaning which applies to it. It must show that the primary significance of the term in the minds of the consuming public is not the product but the producer.”).

3. 2 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 12:13 (4th ed. 2009) [hereinafter *McCarthy*]. According to McCarthy, the following types of evidence may be used to prove genericness: generic use by the proponent of the trademark, uncontested generic use by competitors, dictionary definitions, media usage, testimony of persons in the trade, and consumer surveys; *see also* *In re Merrill Lynch, Pierce, Fenner, and Smith, Inc.*, 828 F.2d 1567, 1570 (Fed. Cir. 1987) (“Evidence of the public’s understanding of the term may be obtained from any competent source, such as purchaser

the claimed mark. Conversely, those seeking to demonstrate that a mark is or has become generic expect that consumers will respond with the disputed mark.

III. THE SURVEYS IN *E. I. DU PONT DE NEMOURS*

In *E. I. Du Pont de Nemours*, plaintiff Du Pont alleged that defendant YKK, the manufacturer of EFLON zippers, infringed Du Pont's TEFLON trademark, which had been in use and had been extensively advertised since the 1960's on or in connection with pots and pans, cooking utensils, and other products. YKK replied that even though "teflon" was a word that had been invented or coined by Du Pont, "teflon" had become generic for non-stick coating. YKK submitted two consumer surveys in its defense, both modeled after the survey credited in *American Thermos*,²³ and Du Pont countered with two surveys. Like YKK's two surveys, the first Du Pont survey was a variant of the Thermos Survey.²⁴ The U.S. District Court found the results from the Thermos Surveys to be

23. *E. I. Du Pont de Nemours*, 393 F. Supp. at 525. YKK's first Thermos Survey asked respondents whether they were aware of "kitchen pots and pans that have their inside surfaces coated by chemical substances to keep grease or food from sticking to them." Aware respondents were asked the names of these pots and pans, how they would describe these pots and pans to a store clerk or friend, and who manufactured these pots and pans. Approximately 91% of YKK's survey respondents were aware of pots and pans with a nonstick coating. Of these, most said that TEFLON alone was the name of these pots and pans (86%) or they would use this name alone to describe such pots and pans to a store clerk or friend (72%). Only 7% of aware respondents identified "Du Pont" as the manufacturer of TEFLON pots and pans. YKK's second Thermos Survey asked similar questions about "substances that manufacturers sometimes apply to the surfaces of certain products in order to prevent things from sticking to them." The findings were similar to YKK's first survey. Approximately 89% of respondents were aware of nonstick coating for pots and pans. The majority of aware respondents said that TEFLON alone was the name of the nonstick coating (81%) or they would use this name alone to describe pots and pans with this nonstick coating to a store clerk or friend (60%). Only 9% identified du Pont as the manufacturer of such coatings.

24. *Id.* at 525-526. Du Pont's Thermos Survey began by telling respondents that "[p]rotective coatings are sometimes applied by manufacturers to the inside of household utensils in order to prevent food and grease from sticking." Survey respondents then were asked, "Do you know a brand name or trademark for one of these coatings?" Aware respondents were asked, "What is that brand name or trademark?" and "Can you think of any other words or terms to describe these coatings?" Almost half (48%) of all survey respondents named TEFLON as the brand name or trademark for these coatings. However, a majority of these survey respondents (68%) could not think of any other words or terms to describe the coatings.

ambiguous,²⁵ even though the format for these surveys had met with approval in other cases.²⁶

Du Pont's second survey employed a different approach. It began by explaining the difference between a "brand name" and a "common name," and it then provided respondents with an example of each (e.g., Chevrolet and automobile). After confirming the survey respondents' understanding of the difference between a brand name and a common name, interviewers read a list of eight words, including the word at issue, or the "test" word (TEFLON), and seven other words that served as "controls" (STP, COKE, JELLO, THERMOS, MARGARINE, REFRIGERATOR, and ASPIRIN). The control words were used to evaluate the meaningfulness of the responses with respect to TEFLON.

After each word was read, survey respondents were asked to classify the word as a brand name or a common name. Over two-thirds (68%) of Du Pont's survey respondents identified TEFLON as a brand name, whereas only about one-third (31%) identified it as a common name. Majorities also correctly identified STP (90%), COKE (76%), and JELLO (75%) as brand names, and REFRIGERATOR (94%), MARGARINE (91%), and ASPIRIN (86%) as common names. Respondents were almost equally divided as to whether THERMOS was a brand name or a common name.

The U.S. District Court credited Du Pont's second survey with showing that TEFLON is a "brand name," finding that the responses of Du Pont's second survey revealed that "the public is quite good at sorting out brand names from common names, and, for TEFLON, answers the critical question . . . that of the principal significance of the TEFLON mark to the public."²⁷

Since *E. I. Du Pont de Nemours*, surveys that define a trademark and a generic name in the introductory section and then ask respondents to classify a list of words (including the challenged mark) as one or the other have been dubbed Teflon

25. *Id.* at 527 ("[R]espondents were, by the design of the questions, more often than not focusing on supplying the inquirer a 'name', without regard to whether the principal significance of the name supplied was 'its indication of the nature or class of an article, rather than an indication of its origin.'").

26. In *Stix Prods., Inc. v. United Merchants & Mfrs., Inc.* (295 F. Supp. 479, 490-491 (S.D.N.Y. 1968)), a Thermos Survey was credited with showing that CONTACT (self-adhesive plastic products) was nongeneric ("As to the surveys, the Crossley, S-D survey, commissioned by Stix on the eve of trial, reflected that when 694 female heads of households were asked the question, 'What do you call this type of product?' 498 (72%) did not use the word 'contact' in any response; 196 (28%) used the word 'contact' in some form in answer to the question; and of those 196, at least 135 (69%) knew 'contact' was a brand. This survey reflects that the majority of consumers do not use 'contact' as a general designation for goods, and further supports this Court's finding that the word 'contact' alone serves no descriptive purpose.").

27. *E. I. Du Pont de Nemours*, 393 F. Supp. at 527.

Surveys.²⁸ When a majority of relevant consumers identifies a challenged mark as a “brand name,” the survey will be proffered to show nongenericness; conversely, parties challenging a mark as being generic will tender a Teflon Survey if more than half of relevant consumers classifies the mark as a “common name.”

IV. THERMOS SURVEYS AFTER *AMERICAN THERMOS*

The U.S. District Court in *E. I. Du Pont de Nemours* found the Thermos Surveys unpersuasive because respondents may have supplied a word without regard to its principal significance as being the nature or class of an article versus an indication of origin.²⁹ Some critics of the Thermos Survey format have echoed these concerns.³⁰ Still others claim that the high usage of a word in a Thermos Survey may show genericness, but the lack of usage does not mean a word is *not* generic. For this reason, they contend

28. The plaintiff's survey in *Du Pont Cellophane* (6 F. Supp. at 885) may have been the inspiration for the survey credited four decades later in *E. I. Du Pont de Nemours* with showing that TEFLON was a brand name. In *Du Pont Cellophane*, the plaintiff's mail survey instructed respondents, as follows: “I am trying to determine, for one of the leading advertisers of the country, how familiar our most intelligent magazine readers are with trademarked names. Will you help me by putting an ‘x’ after each name given below which you look upon as a trademark? You understand, of course, that a trademark is a name or mark which indicates that the goods bearing this name or mark are manufactured or sponsored by one concern only. * * * Will you put an ‘x,’ please, after each name below, which you think is a trademark? Just give your immediate reaction, without investigation or study. Then fill in your name and address, and return it in the addressed envelope attached.” The list of names included the disputed name (CELLOPHANE), as well as brand name controls (VASELINE, CARBONA, COCOMALT, POSTUM, and KODAK) and common name controls (SILK, AMMONIA, IODINE, and COLOGNE). In *Du Pont Cellophane* the court found the questions in plaintiff's survey to be “fairly presented,” but did not rely on the survey's results due to hearsay concerns. However, on appeal, the Second Circuit disregarded plaintiff's Teflon Survey for other reasons.

29. *E. I. Du Pont de Nemours*, 393 F. Supp. at 527. According to Leiser & Schwartz, *supra* note 19, at 382, “the most serious questioning of the Thermos technique is found in Teflon.”

30. Jerre B. Swann & Vincent N. Palladino, *Surveying “Genericness”: A Critique of Folsom and Teply*, 78 TMR 179, 180 (1988) [hereinafter Swann & Palladino] (“[I]n Thermos, ‘product category’ questions focusing on what words consumers use to describe or ask for a product were sanctioned by the court. Such questions have two deficiencies: they do not address the critical issue of consumer ‘understanding’ as to the disputed term, and interviewees may feel ‘compelled to supply a brand name as an answer without regard to its primary meaning.”); Palladino, *supra* note 5, (“[T]hermos Question Three does not necessarily establish the extent of generic significance, because it asks respondents to ‘describe’ a product and asks ‘what words’ they would use to do so. This is not the same as asking them to provide the product's generic name.”).